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SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 18

STANDARD-VACUUM OIL COMPANY, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JANUARY 21, 1950.

CERTIORARI GRANTED MARCH 27, 1950.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 532

STANDARD-VACUUM OIL COMPANY, PETITIONER,

vs.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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IN THE COURT OF CLAIMS OF THE UNITED STATES

No. 48319

STANDARD-VACUUM OIL COMPANY

vs.

THE UNITED STATES

HISTORY OF PROCEEDINGS

The original petition was filed December 5, 1947.

On March 24, 1948, on motion made therefor, and allowed by the court, the plaintiff filed an Amended Petition.

On April 12, 1948, the defendant filed its motion to dismiss claims fifth, seventh, and fifteenth of Amended Petition.

On June 1, 1948, on motion made therefor, and allowed by the court, the plaintiff filed a Second Amended Petition as follows:

[fol. 3] SECOND AMENDED PETITION—Filed June 1, 1948

To the Honorable the Court of Claims of the United States:

The plaintiff alleges upon information and belief:

First Claim

1. The plaintiff, Standard-Vacuum Oil Company, is, and at all times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Delaware.

2. The plaintiff has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government.

3. The plaintiff believes the facts as stated in this petition to be true.

4. On or about December 1, 1941, the plaintiff was the owner and in possession of the following property then located at Pandacan, Manila, Philippine Islands:

[fol. 4] (a) Stocks of petroleum products (including kerosene, gasoline, diesel oil, bunker fuel oil, lubricating oils and greases and specialty products), more particularly set forth in column (1) of Exhibit A hereto annexed and by reference thereto made a part hereof;

(b) Storehouse equipment, materials and supplies, more particularly described in Exhibit B hereto annexed and by reference thereto made a part hereof;

(c) Plant and equipment (including buildings, land improvements, walls, fences and embankments, wharves and waterfront equipment, sewerage and drainage and other plant and equipment), more particularly described in Exhibit C hereto annexed and by reference thereto made a part hereof;

(d) Tank cars, trucks and floating equipment, more particularly described in Exhibit D hereto annexed and by reference thereto made a part hereof.

5. During the period from on or about December 1, 1941, to on or about December 25, 1941, the date of the requisition referred to in paragraph 9 hereof, (there were delivered to the plaintiff at Pandacan, Manila, Philippine Islands, and at or before such delivery the plaintiff became the owner and in possession of the additional amounts of petroleum products more particularly set forth in column (2) of Exhibit A hereto annexed.

6. During the period from on or about December 1, 1941, to on or about December 25, 1941, the date of the requisition referred to in paragraph 9 hereof, the plaintiff sold and delivered to others than the defendant the quantities and kinds of petroleum products set forth in column (4) of Exhibit A hereto annexed.

7. During the period from on or about December 1, 1941, to on or about December 25, 1941, the date of the requisition [fol. 5] referred to in paragraph 9 hereof, the plaintiff sold and delivered to the defendant at Manila, Philippine

Islands, the quantities and kinds of petrolum products set forth in column (5) of Exhibit A hereto annexed.

8. On or about December 25, 1941, and at and prior to the requisition thereof as set forth in paragraph 9 hereof, the plaintiff was the owner and entitled to the possession of all of the property referred to in paragraphs 4 and 5 hereof other than the petroleum products sold and delivered to the defendant and others as set forth in paragraphs 6 and 7 hereof; and said property so owned by the plaintiff had as of December 25, 1941, and as of the time of requisition thereof, an aggregate value (exclusive of the value of certain petroleum products and of tank cars, trucks and floating equipment which were then owned by the plaintiff and were requisitioned as set forth in paragraph 9 hereof, but in respect of which the plaintiff has received payment as set forth in paragraph 12 hereof) of not less than $2,288,-210.89, of which the aggregate value of the petroleum products included in said property (exclusive of products in respect of which the plaintiff has received payment as aforesaid) was not less than $1,224,392.74, the value of the storehouse equipment, materials and supplies included therein was not less than $247,113.90, and the value of the plant and equipment included therein was not less than $816,704.25.

9. On or about December 25, 1941, the defendant requisitioned, appropriated, and took title to and possession of, all the property referred to in paragraph 8 hereof and then owned by the plaintiff as therein stated, pursuant to a letter of requisition, dated December 25, 1941, which was delivered to the plaintiff on or about December 25, 1941. The property so requisitioned, appropriated and taken is herein sometimes called the requisitioned property. The names of the agents or representatives of defendant presently known to plaintiff who requisitioned, appropriated, took title to or [fol. 6] possession of such property are: Colonel Hugh J. Casey, C. E. Engineers, USAFFE, Lieutenant Colonel Marshall, Deputy Chief of Staff, USAFFE, Colonel Quinn, USAFFE, Colonel Drake, Quartermaster Corps, USAFFE, Colonel Brezini, Depot Quartermaster, USAFFE, First Lieutenant W. C. Ramme, USAFFE, Captain Gantz, Asiatic Fleet Supply Officer, United States Navy, and Captain Morsell, Cavite Naval District Supply Officer, United States

Navy. A copy of the letter of requisition, dated December 25, 1941, is attached hereto as Exhibit E.

10. From and after the time of the requisitioning, appropriation and taking as aforesaid of the requisitioned property, the defendant exercised complete control of said property, and disposed thereof in such manner as it saw fit and excluded the plaintiff from any and all control thereof; and all persons (including employees of the plaintiff) were required to act, and did act, with respect to said property, upon the sole instructions of the defendant acting by and through the United States Army and its representatives, with respect to said property.

11. No part of the requisitioned property has at any time been returned, or otherwise made available, to the plaintiff or to anyone acting in its behalf, except that certain portions of fire wall and two tanks, having an aggregate value as of December 25, 1941, the date of requisitioning, of $76,166.25 were returned in damaged condition on or about May 2, 1946, the damage to said property by reason of the requisitioning, appropriation, taking and use thereof by the defendant being $58,729.00 and the value of said property on the date of return being $17,437.25.

12. On or about May 3, 1946, the plaintiff filed with the United States Army Claims Service, Manila, Philippine Islands, a proof of claim in the amount of $3,230,622.21 in respect of the property sold and delivered to the defendant [fol. 7] as set forth in paragraph 7 hereof and the requisitioned property. On or about July 12, 1946, said Claims Service informed the plaintiff that said office was authorized to investigate and adjudicate the portion of the claim pertaining to stocks and equipment procured by the United States Army for its use, and requested that the plaintiff furnish it a list of the property procured by the United States Army for its use, exclusive of property that was destroyed. Upon the basis of such request by the United States Army Claims Service, the plaintiff on or about August 6, 1946, withdrew the aforesaid proof of claim, and filed a new proof of claim setting forth the property believed by the plaintiff to have been procured by the Army for use exclusive of property that was destroyed, within the meaning of the aforesaid request by said United States Army Claims Service, and stating that "This claim is being re-

submitted on the basis that it will not prejudice other losses sustained at our Pandacan (Manila) Terminal as a result of the United States Army's requisition and destruction." Said United States Army Claims Service assigned number Pro. No. CC46-X-19881 to the proof of claim filed as aforesaid on or about August 6, 1946. On or about October 15, 1946, the plaintiff amended the proof of claim filed on or about August 6, 1946, so that said proof of claim as amended was for the sum of $1,308,597.81 and included the property set forth in columns (5) and (7) of Exhibit A and in Exhibit D hereto annexed. On or about November 18, 1947, the plaintiff filed with the United States Army Claims Service, Manila, Philippine Islands, a proof of claim in the amount of 4,541,547.28 pesos ($2,270,773.64) in respect of the requisitioned property, excluding such of the requisitioned property as was included in the aforesaid claim number Pro. No. CC46-X-19881, and including the property more particularly set forth in column (8) of Exhibit A, and in Exhibit B and Exhibit C hereto annexed; but the plaintiff has not been informed as to what action, if any, has been taken by said United States Army Claims Service on said proof of claim, except that said Claims Service assigned [fol. 8] numbers of Pro. U-4-110 468/69/70 to said proof of claim filed on or about November 18, 1947. On or about November 22, 1947, the plaintiff received the sum of 2,234,-919.42 pesos ($1,117,459.71) in respect of the property referred to in claim number Pro. No. CC46-X-19881, as amended, and released the Government from further liability in respect of said claim, the release specifically providing as follows: "Excepted from this release are all items and matters not specifically included in our claim number Pro. No. CC46-X-19881."

13. Except as stated in paragraph 12 hereof, no action has been taken on the plaintiff's claim, or any part thereof, by Congress or by any department of the Government.

14. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than the plaintiff has been or is the owner of or interested in said claim or any part thereof.

15. By reason of the foregoing, the plaintiff claims the sum of $2,270,773.64 plus an amount equivalent to interest at the rate of 6% per annum on said sum from December 25,

1941, the date of requisitioning, to the date of the entry of judgment herein, under the provisions of the Fifth Amendment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

16. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

Second Claim

17. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2 and 3 hereof with the same force and effect as if herein set forth in full.

[fol. 9] 18. During the period from December 7, 1941, to May 31, 1942, the plaintiff, at the instance of representatives of the United States Army, sold and delivered to the defendant at Bacolod, Philippine Islands, supplies of gasoline, oil, grease and dispensing equipment, for which the defendant promised and agreed to pay the sum of 30,161.70 pesos ($15,080.85), and which were of the reasonable value of that amount. The name of the representative of the United States Army at whose instance plaintiff sold and delivered the supplies, and the name of the agent or representative of defendant who promised and agreed to pay the sum of 30,161.70 pesos therefor, is Colonel R. I. Jones, Infantry Commanding Officer, USAFFE, Quartermaster Sub-Depot Bacolod, Philippine Islands. The following quantities and kinds of supplies were sold and delivered between December 8, 1941, and May 31, 1942:

33,600 liters (8,877.15 gallons) gasoline	₱ 3,744.60	
135,600 liters (35,825.62 gallons) gasoline	₱24,737.10	
4,000 tins (5 gallons each) gasoline		
1 Lub. Oil drum pump P-10	₱ 15.00	
1 Lub. Oil drum pump P-11	₱ 15.00	
1 Brunner Air Compressor 1 H.P. Series No. 67237	₱ 750.00	
1 Curtis Air Compressor, 2 H.P. Series No. S-0129	₱ 900.00	
	₱30,161.70	

19. During the period from December 7, 1941, to on or about May 31, 1942, the plaintiff, at the instance of representatives of the United States Army, sold and delivered to the defendant at La Carlota, Philippine Islands, supplies of lubricants for which the defendant promised and agreed to pay the sum of 10,218.99 pesos ($5,109.50) and which were of the reasonable value of that amount. The name of the representative of the U. S. Army at whose instance plaintiff sold and delivered the supplies of lubricants, and the name of the agent or representative of defendant who promised and agreed to pay the sum of 10,218.99 pesos therefor, is [fol. 10] Colonel R. I. Jones, Infantry Commanding Officer, USAFFE, Quartermaster Sub-Depot, Bacolod, Philippine Islands. The following quantities and kinds of supplies were sold and delivered between December 8, 1941 and May 31, 1942:

Lubricating Oils

1100	Gallons Mobil Oil AF	
2115	" " " BB	
600	" " " A	
208	" " " C	
439.9	" " Sovac Truck Bus Oil #4	
110.9	" " " " " " #2	
4573.8		₱ 9,840.81

Grease

1298.9 lbs. Mobilube T	378.18
	₱10,218.99

20. The agreements or purchase orders (if any) with respect to said sales and deliveries were lost or destroyed, and the plaintiff does not have a copy of said agreements or purchase orders or any thereof.

21. The plaintiff has duly demanded payment of the aforesaid sums, but no part thereof has been paid.

22. The plaintiff on or about April 3, 1946, filed (by amendment to a proof of claim filed on or about January 16, 1946) a proof of claim in respect of said property with

the United States Army Claims Service, Iloilo, Philippine Islands; but the plaintiff has not been informed as to what action, if any, has been taken on said proof of claim (filed April 3, 1946) by said United States Army Claims Service.

23. Except as stated in paragraph 22 hereof, no action has been taken on said claim, or any part thereof, by Congress or by any department of the Government.

24. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person [fol. 11] other than the plaintiff has been or is the owner of or interested in said claim or any part thereof.

25. The plaintiff claims the sum of $20,190.35 under the agreements referred to in paragraphs 18 and 19 hereof.

26. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

Third Claim

27. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2 and 3 hereof with the same force and effect as if herein set forth in full.

28. On or about December 12, 1941, the plaintiff, at the instance of representatives of the United States Army sold and delivered to the defendant on the destroyer U. S. S. John Paul Jones, at or near Cebu (Opon), Philippine Islands, 600 tons of bunker fuel oil for which the defendant promised and agreed to pay the sum of 27,600 pesos ($13,800.00) and which were of the reasonable value of that amount. The name of the representative of the United States Army at whose instance plaintiff sold and delivered the bunker fuel oil, and the name of the agent or representative of defendant who promised and agreed to pay the sum of 27,600 pesos therefor is Colonel John D. Cook, Quartermaster USAFFE.

29. The agreement or purchase order (if any) with respect to said sale and delivery was lost or destroyed, and the plaintiff does not have a copy of said agreement or purchase order.

30. The plaintiff has duly demanded payment of said sum but no part thereof has been paid.

[fol. 12] 31. The plaintiff on or about March 25, 1947, filed with the United States Army Claims Service, Cebu, Philippine Islands, a proof of claim in respect of said property, but the plaintiff has not been informed as to what action, if any, has been taken on said proof of claim by said United States Army Claims Service.

32. Except as stated in paragraph 31 hereof, no action has been taken on said claim, or any part thereof, by Congress or by any department of the Government.

33. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than the plaintiff has been or is the owner of or interested in said claim or any part thereof.

34. The plaintiff claims the sum of $13,800.00 under the agreement referred to in paragraph 28 hereof.

35. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

Fourth Claim

36. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2 and 3 hereof with the same force and effect as if herein set forth in full.

37. On or about December 15, 1941, and at and prior to the requisition thereof as set forth in paragraph 38 hereof, the plaintiff was the owner and in possession of certain supplies of gasoline, kerosene, diesel oil and lubricants located at or near Cebu, Philippine Islands, and having a value as of that date and as of the time of such requisition of not less than $1,077,270.79 (exclusive of the value of supplies thereof returned to the plaintiff, subsequent to such requisition, for [fol. 13] sale and delivery to the government of the Commonwealth of the Philippines and to others performing vital civilian functions, as set forth in paragraph 43 hereof).

The kinds and quantities of gasoline, kerosene, diesel oil and lubricants are as follows:

Gasoline	2,255,644 gallons
Kerosene	61,700 "
Bunker Fuel Oil C	451,212 "
Diesel Fuel	1,363,790 "
Lubricating Oils High Grade	111,200 "
Lubricating Oils Premium Grade	13,750 "
Lubricating Oils Intermediate Grade	56,100 "
Lubricating Oils Ordinary Grade	89,500 "
Greases High Grade	27,393 pounds
Hydraulic Brake Fluid	450 gallons
Shock Absorber Oil	120 gallons

38. On or about December 15, 1941, the defendant requisitioned, appropriated, and took title to and possession of, all the property referred to in paragraph 37 hereof. The names of the agents or representatives of defendant presently known to plaintiff who requisitioned, appropriated, took title to or possession of such property are Colonel John D. Cook, Quartermaster USAFFE and Lieutenant O'Brien, USAFFE. Shortly following December 8, 1941, members of the United States Army were stationed upon the properties of plaintiff, and on or about December 15, 1941, Colonel Cook commandeered all supplies of petroleum products located thereon. So far as is known, the orders were verbal. Thereafter under directions of Colonel Cook and the United States Army all employees of plaintiff engaged in delivering petroleum products to supply dumps of the United States Army.

39. From and after the time of the requisitioning, appropriation and taking as aforesaid of said property, the de- [fol. 14] fendant exercised complete control of said property, and disposed thereof in such manner as it saw fit, and excluded the plaintiff from any and all control thereof; and all persons, including employees of the plaintiff, were required to act, and did act, with respect to said property, upon the sole instructions of the defendant, acting by and through the United States Army and its representatives, with respect to said property.

40. During the period from on or about December 15, 1941, the date of requisitioning, to on or about March 31, 1942, the plaintiff, at the instance of representatives of the United States Army, transferred to United States Army dumps in and about Cebu portions of the property requisitioned as aforesaid, having a value of $410,686.57, and the defendant promised and agreed to pay for said portions of said requisitioned property the sum of 821,373.14 pesos ($410,686.57). The names of the representatives of the United States Army at whose instance plaintiff transferred portions of such property, and the names of the agents or representatives of defendant who promised and agreed to pay the sum of 821,343.14 pesos therefor, are Colonel Cook, Lieutenant O'Brien, and Lieutenant Lachica, USAFFE. The kinds and quantities of the property transferred between January 15 and April 1, 1942, are as follows:

Gasoline	821,444 gallons
Kerosene	21,000 "
Diesel Fuel	24,810 "
Bulk Fuel	172,800 "
Lubricating Oils High Grade	111,200 "
Lubricating Oils Premium Grade	13,750 "
Lubricating Oils Intermediate Grade	56,100 "
Lubricating Oils Ordinary Grade	89,500 "
Greases High Grade	27,393 pounds
Hydraulic Brake Fluid	450 gallons
Shock Absorber Oil	120 gallons

[fol. 15] 41. The agreement (if any) with respect to such payment was lost or destroyed, and the plaintiff does not have a copy of said agreement.

42. The plaintiff has duly demanded payment of said sum so agreed to be paid, but no part thereof has been paid.

43. No part of the property requisitioned as aforesaid has at any time been returned, or otherwise made available, to the plaintiff or to anyone acting in its behalf, except that certain supplies of gasoline and oil were returned to the plaintiff for sale and delivery by it to the government of the Commonwealth of the Philippines and to others performing vital civilian functions. Plaintiff does not presently know the kinds and quantities of gasoline and oil which were

returned to plaintiff, nor the dates upon which such returns were made.

44. The plaintiff, on or about March 25, 1947, filed with the United States Army Claims Service, Cebu, Philippine Islands, a proof of claim and on May 12, 1947, filed a revised proof of claim, in respect of the supplies of gasoline, kerosene, diesel oil and lubricants transferred as aforesaid to United States Army dumps by the plaintiff at the instance of representatives of the United States Army, and for which the defendant promised and agreed as aforesaid to pay the sum of 821,373.14 pesos ($410,686.57); but the plaintiff has not been informed as to what action, if any, has been taken on said proof of claim by said United States Army Claims Service.

45. Except as stated in paragraph 44 hereof, no action has been taken on the plaintiff's claim, or any part thereof, by Congress or by any department of the Government.

46. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than the plaintiff has been or is the owner of or interested in said claim or any part thereof.

[fol. 16] 47. By reason of the foregoing, the plaintiff claims the sum of $1,077,270.79 plus an amount equivalent to interest at the rate of 6% per annum on said sum from December 15, 1941, the date of requisitioning, to the date of the entry of judgment herein, under the provisions of the Fifth Amendment to the Constitution of the United States and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

48. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

Fifth Claim

49. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2 and 3 hereof with the same force and effect as if herein set forth in full.

50. On or about April 1, 1942, and at and prior to the requisition thereof as set forth in paragraph 51 hereof, the

plaintiff was the owner and in possession of nine gasoline tanks located at or near Cebu, Philippine Islands, more particularly described in Exhibit F annexed hereto and having a value as of that date and as of the time of such requisition ~~of not less than~~ $152,066.50.

51. On or about April 1, 1942, the defendant requisitioned, appropriated, and took title to and possession of all the property referred to in paragraph 50 hereof. The names of the agents or representatives of defendants who requisitioned, appropriated, and took title to and possession of, the property are Colonel John D. Cook, Quartermaster, USAFFE and Lieutenant Lachica, USAFFE. The United States Army entered the premises and exercised exclusive control [fol. 17] thereof. Demolition charges were placed in and about the property by the United States Army, and thereafter the charges were set off by the Army, destroying the property. The orders of requisition were verbal.

52. From and after the time of the requisitioning, appropriation and taking as aforesaid of said property, the defendant exercised complete control of said property, and ultimately destroyed the same.

53. By reason of the foregoing, the plaintiff claims the sum of $152,066.50 plus an amount equivalent to interest at the rate of 6% per annum on said sum from April 1, 1942, the date of requisitioning, to the date of the entry of the judgment herein, under the provisions of the Fifth Amendment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

54. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

Sixth Claim

55. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2 and 3 hereof with the same force and effect as if herein set forth in full.

56. During the period from May 6, 1942, to on or about February 9, 1943, the plaintiff, at the instance of representatives of the United States Army, sold and delivered to the

defendant at or near Iloilo, Philippine Islands, for use by a guerrilla unit at Panay, Philippine Islands, supplies of petroleum products for which the defendant promised and agreed to pay the sum of 1,858.47 pesos ($929.24) and which were of the reasonable value of that amount. Plaintiff does [fol. 18] not presently know the names of the representatives of the United States Army at whose instance it sold and delivered the petroleum products, nor the names of the agents or representatives of defendant who promised and agreed to pay the sum of 1,858.47 pesos therefor, nor the quantities and kinds of petroleum products so sold and delivered but the products were sold and delivered in small quantities as follows: November 19, 1942, to Captain Ramon G. Gelvezon; November 23, 1942, to Lieutenant Marcelo Obregon; December 8, 1942, to Major Amos M. Francia; December 24, 1942, to Lieutenant Francisco Tumbukon; October 27, 1942, to Captain Ramon G. Gelvezon; February 9, 1943, to Major C. E. Fertig; May 6, 1942, to Technical Sergeant Manuel Catedral.

57. The agreement or purchase order (if any) with respect to said sale and delivery was lost or destroyed, and the plaintiff does not have a copy of said agreement or purchase order.

58. The plaintiff has duly demanded payment of said sum but no part thereof has been paid.

59. The plaintiff on or about May 28, 1947, filed a proof of claim in respect of said property with the United States Army Claims Service, Iloilo, Philippine Islands, but the plaintiff has not been informed as to what action, if any, has been taken on said proof of claim by said United States Army Claims Service.

60. Except as stated in paragraph 59 hereof, no action has been taken on said claim, or any part thereof, by Congress or by any department of the Government.

61. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than the plaintiff has been or is the owner of or interested in said claim or any part thereof.

[fol. 19] 62. The plaintiff claims the sum of $929.24 under the agreement referred to in paragraph 56 hereof.

63. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

Seventh Claim

64. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2 and 3 hereof with the same force and effect as if herein set forth in full.

65. On or about December 8, 1941, and at and prior to the requisition thereof as set forth in paragraph 66 hereof, the plaintiff was the owner and in possession of certain stocks of petroleum products, supplies, buildings and equipment located at or near San Fernando, La Union, Philippine Islands, more particularly described in Exhibit G annexed hereto and having a value as of that date and as of the time of such requisition of not less than $144,414.87.

66. On or about December 18, 1941, the defendant requisitioned, appropriated, and took title to and possession of all the property referred to in paragraph 65 hereof. The name of the agent of defendant who requisitioned, appropriated and took title to and possession of the property is Major Noble, United States Army. Major Noble ordered the property to be turned over to the United States Army. This order was in writing, but plaintiff does not have a copy thereof. On or about December 20, 1941, explosives were placed about the property and on December 21, 1941, the charges were set off by the United States Army and the property was destroyed.

67. From and after the time of the requisitioning, appropriation, and taking as aforesaid of said property, the de- [fol. 20] fendant exercised complete control of said property and disposed thereof in such manner as it saw fit and excluded the plaintiff from any and all control thereof; and all persons, including employees of the plaintiff, were required to act and did act with respect to said property upon the sole instructions of defendant, acting by and through the United States Army and its representatives, with respect to said property.

68. On or about December 20, 1941, the plaintiff at the instance of representatives of the United States Army, deliv-

ered to the defendant at or near San Fernando, La Union, Philippine Islands, a part of the property requisitioned consisting of supplies of gasoline for which the defendant promised and agreed to pay the sum of $1,119.29 pesos ($559.64) and which were of the reasonable value of that amount.

69. The agreement (if any) with respect to such payment was lost or destroyed, and the plaintiff does not have a copy of said agreement.

70. The plaintiff has duly demanded payment of said sum but no part thereof has been paid.

71. The plaintiff on or about April 29, 1947 filed a proof of claim in respect of such supplies of gasoline with the United States Army Claims Service, Manila, Philippine Islands; but the plaintiff has not been informed as to what action, if any, has been taken on said proof of claim by said United States Army Claims Service.

72. Except as stated in paragraph 71 hereof, no action has been taken on said claim, or any part thereof, by Congress or by any department of the Government.

73. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than the plaintiff has been or is the owner of or interested in said claim or any part thereof.

[fol. 21] 74. By reason of the foregoing the plaintiff claims the sum of $144,414.87 plus an amount equivalent to interest at the rate of 6% per annum on said sum from December 18, 1941, the date of requisitioning, to the date of entry of judgment herein, under the provisions of the Fifth Amendment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

75. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

Eighth Claim

76. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2 and 3 hereof with the same force and effect as if herein set forth in full.

77. On or about April 1, 1942, and at and prior to the requisition thereof as set forth in paragraph 78 hereof, the plaintiff was the owner and in possession of one steel 153,000 gallon gasoline tank, with pipe lines, and 38,250 gallons of motor gasoline contained therein, located at or near Bacolod, Philippine Islands, and having a value as of said date and as of the time of such requisition of not less than $16,682.59.

78. On or about April 1, 1942, the defendant requisitioned, appropriated, and took title to and possession of, all the property referred to in paragraph 77 hereof. The names of the agents of defendant who requisitioned, appropriated, and took title to and possession of, the property are W. R. Muller and Colonel Richard I: Jones, Commanding Officer, Bacolod Quartermaster Sub-depot, USAFFE. Mr. Muller, acting as procurement agent for Colonel Jones, [fol. 22] stated to the employees of plaintiff that the United States Army was taking full charge of the property and that nothing was to be removed. The property continued under the control of the United States Army from April to May 21, 1942, when it was destroyed by the United States Army. The orders above referred to were verbal.

79. From and after the time of the requisitioning, appropriation and taking as aforesaid of said property, the defendant exercised complete control of said property, and disposed thereof in such manner as it saw fit and excluded the plaintiff from any and all control thereof.

80. No part of said property has at any time been returned, or otherwise made available, to the plaintiff or to anyone acting in its behalf.

81. The plaintiff, on or about June 6, 1946, filed a proof of claim in respect of said property with the United States Army Claims Service, Iloilo, Philippine Islands; but the plaintiff has not been informed as to what action, if any, has been taken on said proof of claim by said United States Army Claims Service.

82. Except as stated in paragraph 81 hereof, no action has been taken on said claim, or any part thereof, by Congress or by any department of the Government.

83. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than the plaintiff has been or is the owner of or interested in said claim or any part thereof.

84. By reason of the foregoing, the plaintiff claims the sum of $16,682.59 plus an amount equivalent to interest at the rate of 6% per annum on said sum from April 1, 1942, the date of requisitioning, to the date of the entry of judgment herein, under the provisions of the Fifth Amendment [fol. 23] to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

85. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

Ninth Claim

86. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2 and 3 hereof with the same force and effect as if herein set forth in full.

87. On or about December 12, 1941, and at and prior to the requisition thereof as set forth in paragraph 88 hereof, the plaintiff was the owner and in possession of certain stocks of petroleum products, buildings and equipment known as a bulk plant located at or near Tarlac, Philippine Islands, and having a value as of that date and as of the time of such requisition of not less than $6,414.70. The quantities and kinds of the petroleum products, buildings and equipment are as follows:

7767.5 gals. Gasoline
2—17,500 gal. underground tanks
1—500 gal. underground tank
1—Gasoline Pump
1—Building 15′ x 19′ x 14′ concrete foundation, wood frame, floor and sides, galvanized iron roof.

88. On or about December 12, 1941, the defendant requisitioned, appropriated, and took title to and possession of all the property referred to in paragraph 87 hereof. The names of the agents of defendant who requisitioned, appropriated, and took title to and possession of the property [fol. 24] are Colonel Charles S. Lawrence, USAFFE, and Captain Valdez. The employees of plaintiff were advised by Colonel Lawrence that the United States Army was commandeering plaintiff's bulk plant at Tarlac and the stocks of gasoline stored there. Thereafter the United States Army exercised exclusive control over the bulk plant and used the stocks of gasoline. On December 26, 1941, the United States Army set off demolition charges and completely destroyed the bulk plant. The orders of requisition above mentioned were verbal.

89. From and after the time of the requisitioning, appropriation and taking as aforesaid of said property, the defendant exercised complete control of said property, and disposed thereof in such manner as it saw fit and excluded the plaintiff from any and all control thereof.

90. No part of said property has at any time been returned, or otherwise made available, to the plaintiff or to anyone acting in its behalf.

91. The plaintiff on or about December 20, 1946, filed with the United States Army Claims Service, Manila, Philippine Islands, a proof of claim in respect of said property. Since the filing of the original petition, the United States Army has made a part payment of $1,458.74 in respect of said claim covering the gasoline but has refused to pay the balance thereof.

92. Except as stated in paragraph 91 hereon, no action has been taken on said claim, or any part thereof, by Congress or by any department of the Government.

93. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than the plaintiff has been or is the owner of or interested in said claim or any part thereof.

[fol. 25] 94. By reason of the foregoing, the plaintiff claims the sum of $4,955.96 plus an amount equivalent to interest at the rate of 6% per annum on said sum from

December 12, 1941, the date of requisitioning, to the date of the entry of judgment herein, under the provisions of the Fifth Amendment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

95. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

Tenth Claim

96. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2 and 3 hereof with the same force and effect as if herein set forth in full.

97. In or about the month of February, 1942, and at and prior to the requisition thereof as set forth in paragraph 98 hereof, the plaintiff was the owner and in possession of one 20-litre visible gasoline pump and one 500-gallon underground tank, located at or near Surigao, Philippine Islands, and having a value as of that time and as of the time of such requisition of not less than $265.00.

98. In or about the month of February, 1942, the defendant requisitioned, appropriated, and took title to and possession of, all the property referred to in paragraph 97 hereof. Plaintiff does not presently know the names of the agents of defendant who requisitioned, appropriated, and took title to and possession of the property. Several officers and enlisted men of the United States Army came to the premises [fol. 26] of Surigao Consolidated Mining Co., Inc., where the plaintiff's pump and tank were situated, and commandeered and carried away numerous pieces of equipment including the pump and tank. The orders of requisition were verbal.

99. From and after the time of the requisitioning, appropriation and taking as aforesaid of said property, the defendant exercised complete control of said property, and disposed thereof in such manner as it saw fit and excluded the plaintiff from any and all control thereof.

100. No part of said property has at any time been returned, or otherwise made available, to the plaintiff or to anyone acting in its behalf.

101. The plaintiff, on or about May 2, 1947, filed with the United States Army Claims Service, Cebu, Philippine Islands, a proof of claim in respect of said property; but the plaintiff has not been informed as to what action, if any, has been taken on said proof of claim by said United States Army Claims Service.

102. Except as stated in paragraph 101 hereof, no action has been taken on said claim, or any part thereof, by Congress or by any department of the Government.

103. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than the plaintiff has been or is the owner of or interested in said claim or any part thereof.

104. By reason of the foregoing, the plaintiff claims the sum of $265.00 plus an amount equivalent to interest at the rate of 6% per annum on said sum from the date of requisitioning to the date of entry of judgment herein, under the provisions of the Fifth Amendment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just com- [fol. 27] pensation for the property so requisitioned, appropriated and taken.

105. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

Eleventh Claim

106. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2 and 3 hereof with the same force and effect as if herein set forth in full.

107. In or about the month of June, 1943, and at and prior to the requisition thereof as set forth in paragraph 108 hereof, the plaintiff was the owner and in possession of one 1,000-gallon underground tank, located at or near Gingoog, Misamis Or., Philippine Islands, and having a value as of that time and as of the time of such requisition of not less than $161.50.

108. In or about the month of June, 1943, the defendant requisitioned, appropriated, and took title to and possession of, all the property referred to in paragraph 107 hereof. The name of the agent of defendant who requisitioned, appropriated, and took title to and possession of the tank is Lieutenant Cinco, C. O. Division Dry Dock at Lunao, acting by authority of Division G-4, 110th Division, 10th M. D. (Guerrilla). The tank in question was taken from the premises at Sta. Clara Lumber Co., Inc., and removed to the town of Mainit, Surigao, for use by the army. The described order of requisition was verbal.

109. From and after the time of the requisitioning, appropriation and taking as aforesaid of said property, the defendant exercised complete control of said property, and dis- [fol. 28] posed thereof in such manner as it saw fit and excluded the plaintiff from any and all control thereof.

110. No part of said property has at any time been returned, or otherwise made available, to the plaintiff or to anyone acting in its behalf.

111. The plaintiff, on or about May 2, 1947, filed with the United States Army Claims Service, Cebu, Philippine Islands, a proof of claim in respect of said property; but the plaintiff has not been informed as to what action, if any, has been taken on said proof of claim by said United States Army Claims Service.

112. Except as stated in paragraph 111 hereof, no action has been taken on said claim, or any part thereof, by Congress or by any department of the Government.

113. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than the plaintiff has been or is the owner of or interested in said claim or any part thereof.

114. By reason of the foregoing, the plaintiff claims the sum of $161.50 plus an amount equivalent to interest at the rate of 6% per annum on said sum from the date of requisitioning to the date of the entry of judgment herein, under the provisions of the Fifth Amendment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just com-

pensation for the property so requisitioned, appropriated and taken.

115. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

[fol. 29] Twelfth Claim

116. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2 and 3 hereof with the same force and effect as if herein set forth in full.

117. In or about the month of May, 1943, and at and prior to the requisitioning thereof as set forth in paragraph 118 hereof, the plaintiff was the owner and entitled to the possession of one ¾ horsepower gasoline engine, located at or near Gingoog, Misamis Or., Philippine Islands, and having a value as of that time and as of the time of such requisition of not less than $60.00.

118. In or about the month of May, 1943, the defendant requisitioned, appropriated, and took title to and possession of, all the property referred to in paragraph 117 hereof. Plaintiff does not presently know the names of the agents of defendants who requisitioned, appropriated, and took title to and possession of, the gasoline engine. They were members of the Filipino Guerrilla Army who took the engine from the premises of one of plaintiff's dealers.

119. From and after the time of the requisitioning, appropriation and taking as aforesaid of said property, the defendant exercised complete control of said property, and disposed thereof in such manner as it saw fit and excluded the plaintiff from any and all control thereof.

120. No part of said property has at any time been returned, or otherwise made available, to the plaintiff or to anyone acting in its behalf.

121. The plaintiff on or about August 30, 1947, filed with the United States Army Claims Service, Cebu, Philippine Islands, a proof of claim in respect of said property; but the plaintiff has not been informed as to what action, if any, has [fol. 30] been taken on said claim by said United States Army Claims Service.

122. Except as stated in paragraph 121 hereof, no action has been taken on said claim, or any part thereof, by Congress or by any department of the Government.

123. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than the plaintiff has been or is the owner of or interested in said claim or any part thereof.

124. By reason of the foregoing, the plaintiff claims the sum of $60.00 plus an amount equivalent to interest at the rate of 6% per annum on said sum from the date of requisitioning to the date of the entry of judgment herein, under the provisions of the Fifth Amendment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

125. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

Thirteenth Claim

126. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2 and 3 hereof with the same force and effect as if herein set forth in full.

127. In or about the month of July, 1945, and at and prior to the requisition thereof as set forth in paragraph 128 hereof, the plaintiff was the owner and entitled to the possession of one ½ horsepower Curtiss air compressor, located [fol. 31] at or near Binakayan, Cavite, Philippine Islands, and having a value as of said date and as of the time of such requisition of not less than $125.00.

128. In or about the month of July, 1945, the defendant requisitioned, appropriated, and took title to and possession of, all the property referred to in paragraph 127 hereof. Plaintiff does not presently know the names of the agents of defendant who requisitioned, appropriated, and took title to and possession of the property. They were enlisted men of 797th M P, United States Army. They took the property from the operator of one of the plaintiff's service stations.

129. From and after the time of the requisitioning, appropriation and taking as aforesaid of said property, the defendant had and exercised complete control of said property, and disposed thereof in such manner as it saw fit and excluded the plaintiff from any and all control thereof.

130. No part of said property has at any time been returned, or otherwise made available, to the plaintiff or to anyone acting in its behalf.

131. The plaintiff on or about September 15, 1946, filed with the United States Army Claims Service, Manila, Philippine Islands, a proof of claim in respect of said property; but the plaintiff has not been informed as to what action, if any, has been taken on said claim by said United States Army Claims Service.

132. Except as stated in paragraph 131 hereof, no action has been taken on said claim, or any part thereof, by Congress or by any department of the Government.

133. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than the plaintiff has been or is the owner of or interested in said claim or any part thereof.

[fol. 32] 134. By reason of the foregoing, the plaintiff claims the sum of $125.00 plus an amount equivalent to interest at the rate of 6% per annum on said sum from the date of requisition to the date of the entry of judgment herein, under the provisions of the Fifth Amendment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

135. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

Fourteenth Claim

136. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2 and 3 hereof with the same force and effect as if herein set forth in full.

137. On or about June 9, 1943, and at and prior to the leasing thereof to the defendant as set forth in paragraph

138 hereof, the plaintiff was the owner and in possession of certain land, buildings, equipment and other property located at or near Hengyang (formerly Hengchowfu), Province of Hunan, China, and having a value as of that date and as of the time of such leasing of not less than $17,256.15. The land consisted of 89,164.35 sq. ft. of irregular shape situated on the south bank of the Siangy River across and downstream from Hengyang, Hunan Province. The buildings included native quarters, filling and reconditioning building, two warehouses and a gasoline tank with a capacity of 109,000 gallons.

138. On or about June 9, 1943, the plaintiff leased all the property referred to in paragraph 137 hereof to the defend- [fol. 33] ant, acting by and through representatives of the United States Army, on a month-to-month tenancy, and the defendant agreed to pay rental therefor at the rate of $200 per month and at the termination of such lease to return all said property to the plaintiff in as good condition, reasonable wear and tear excepted, as at the beginning of said lease; and the defendant entered into possession of said property under said lease on or about June 9, 1943. The names of the representatives of the United States Army who acted on behalf of the tenant in arranging the tenancy are Captain R. J. Belknap, Infantry, Commanding United States Army Service Forces, Hengyang Headquarters, and M. H. Oakley, United States Army Engineer.

139. Any writing with respect to such lease was lost or destroyed, and the plaintiff does not have a copy of any such writing.

140. On or about June 22, 1944, during the continuance of such lease and while the defendant was in possession of said property, the defendant destroyed all of said property, with the exception of the land and one tank.

141. The leasehold interest of the defendant was terminated subsequent to June 23, 1944, and after the destruction as aforesaid by the defendant of the aforesaid property; but the defendant did not return the aforesaid property to the plaintiff in as good condition, reasonable wear and tear excepted, as at the beginning of said lease, but failed to return certain of said property and returned other of said property in damaged condition.

142. The reasonable value of the property which the defendant failed as aforesaid to return was not less than $11,964.45; and the value of the property returned in damaged condition was $557.22 less than would have been the value of said property so returned if it had been returned in the condition required by said lease.

[fol. 34] 143. The plaintiff, on or about September 10, 1947, filed with the United States Army Claims Service, Shanghai, China, a proof of claim in respect of the foregoing; but the plaintiff has not been informed as to what action, if any, has been taken on said proof of claim by said United States Army Claims Service.

144. Except as stated in paragraph 143 hereof, no action has been taken on said claim, or any part thereof, by Congress or by any department of the Government.

145. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than the plaintiff has been or is the owner of or interested in said claim or any part thereof.

146. By reason of the foregoing, the plaintiff claims the sum of $12,521.67 under the lease referred to in paragraph 138 hereof.

147. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

Fifteenth Claim

148. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2 and 3 hereof with the same force and effect as if herein set forth in full.

149. In or about December, 1941, and at and prior to the requisition thereof as set forth in paragraph 150 hereof, the plaintiff was the owner and in possession of certain stocks of petroleum products, supplies, buildings and equipment located at or near La Paz, Iloilo City, Philippine Islands, more particularly described in Exhibit H annexed hereto, [fol. 35] and having a value as of that time and as of the time of such requisition of not less than $131,230.48.

150. During the period from December, 1941, to April 1942, the defendant requisitioned, appropriated, and took

title to and possession of all the property referred to in paragraph 150 hereof. The names of the agents or representatives of defendant who requisitioned, appropriated, took title to and possession of such property are Brigadier General B. G. Cheynowith, USAFFE, Major Bekerton, USAFFE, Lieutenant T. N. Powell, USAFFE and Major Celestino Monrey, CE Sixth Replacement Battalion, Philippine Army. The United States Army commandeered substantially all of the petroleum products under written orders from General Cheynoweth, Major Bekerton and Lieutenant Powell to employees of plaintiff. From on or about December 20, 1941, to January 15, 1942, such petroleum products were disbursed upon instructions of the United States Army to various supply depots as follows: Mandurriao Schoolhouse and Yard, Cabatuan Schoolhouse and Yard, Arevalo Schoolhouse and Yard, LaGrange Experimental Station and a building in Janiuay. Subsequently enlisted men of the United States Army and Major Monrey prepared and planted demolition charges throughout plaintiff's remaining property and, on April 16, 1942, set off the charges destroying the property. The written orders with respect to the petroleum products have been lost or destroyed, and plaintiff does not have a copy thereof. The orders in respect of the demolition of plaintiff's property were verbal.

151. No part of said property has at any time been returned, or otherwise made available to, the plaintiff or to anyone acting in its behalf, except that in or about March, 1946, the premises where the property had been situated were returned to plaintiff, upon which were certain fixtures having a salvage value of $12,512.50.

152. By reason of the foregoing the plaintiff claims the sum of $118,717.98 plus an amount equivalent to interest at [fol. 36] the rate of 6% per annum on said sum from April 16, 1942, the date of requisitioning, to the date of the entry of judgement herein, under the provisions of the Fifth Amendment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

153. The plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets, exclusive of the plaintiff's liability for income taxes in respect of a recovery hereunder.

Wherefore, the plaintiff respectfully prays judgment against the defendant in the amount of $3,832,935.09 plus an amount equivalent to interest at the rate of 6% per annum on parts thereof, as follows:

(i) on $2,270,773.64 thereof from December 25, 1941;
(ii) on $1,077,270.79 thereof from December 15, 1941;
(iii) on $152,066.50 thereof from April 1, 1942;
(iv) on $144,414.87 thereof from December 18, 1941;
(v) on $16,682.59 thereof from April 1, 1942;
(vi) on $4,955.96 thereof from December 12, 1941;
(vii) on $265 thereof from February 15, 1942;
(viii) on $161.50 thereof from June 1, 1943;
(ix) on $60 thereof from May 1, 1943;
(x) on $125 thereof from July 1, 1945;
and
(xi) on $118,717.98 thereof from April 16, 1942, and [fol. 37] for such other and further relief as to this Court may seem just and proper.

Standard-Vacuum Oil Company, by Cravath, Swaine & Moore, by Bruce Bromley, a member of the firm, Attorneys for Plaintiff, 15 Broad Street, New York 5, N. Y.

Duly sworn to by E. T. Singer, jurat omitted in printing.

[fol. 38]

EXHIBIT A TO PETITION

Stocks of petroleum products (including kerosene, gasoline, diesel oil, bunker fuel oil, lubricating oils and greases and specialty products) referred to in paragraphs 4(a), 5, 6, 7 and 12 of the Petition

Product		Column (1) On hand December 1, 1941	Column (2) Arrivals December 1, 1941- December 25, 1941	Column (3) Total	Column (4) Deliveries to other than United States Army	Column (5) Deliveries to United States Army December 1, 1941- December 25, 1941	Column (6) Stocks of Petroleum Products Requisitioned December 25, 1941	Column (7) Requisitioned Petroleum Products Included in Claim No. Pro. No. CC46-X-19881	Column (8) Requisitioned Petroleum Products NOT Included in Claim No. Pro. No. CC46-X-19881
Kerosene	(gal.)	924,000	588,000	1,512,000	210,000	—	1,302,000	—	1,302,000
Aviation Gasoline 87 Base	"	42,000	—	42,000	42,000	—	—	—	—
Aviation Gasoline 100 Base	"	210,000	—	210,000	—	146,480	63,520	36,620	26,900
Motor Gasoline	"	2,184,000	1,008,000	3,192,000	630,000	1,751,200	810,800	437,800	373,000
Diesel Oil	"	1,890,000	1,268,211	3,158,211	346,500	200,000	2,611,711	50,000	2,561,711
Bunker Fuel Oil	"	1,638,000	1,646,862	3,284,862	546,000	1,434,352	1,304,510	358,588	945,922
Mobil and Aviation Oils	"	212,579	—	212,579	11,697	160,706	40,176	40,176	—
Other high grade Motor & Aviation Oils	"	45,207	—	45,207	3,007	33,760	8,440	8,440	—
All other high grade Gargoyle Oils	"	294,487	—	294,487	15,287	111,680	167,520	27,920	139,600
Intermediate Oils	"	95,755	—	95,755	4,377	36,551	54,827	9,138	45,689
Ordinary Oils	"	1,066,629	—	1,066,629	56,028	—	1,010,601	—	1,010,601
Non-Lubricating Oils	"	11,051	—	11,051	476	—	10,575	—	10,575
Gargoyle and Aviation Greases	(lbs.)	366,173	—	366,173	12,084	141,635	212,454	35,409	177,045
All other Greases	"	450,425	—	450,425	13,964	46,584	389,877	11,646	378,231
Petrolatums	"	180,498	—	180,498	21,448	—	159,050	—	159,050
Wax	"	14,378	—	14,378	12,499	—	1,879	—	1,879
Asphaltum	"	2,898,480	—	2,898,480	712,320	—	2,186,160	—	2,186,160

[fol. 39]

Exhibit B to Petition

Storehouse equipment, materials and supplies referred to in paragraph 4(b) of the Petition

(1) General Storehouse Materials and Spare Equipment

Item	Value
"Ethyl" Compound AK & I-T Blue—for blending & coloring gasoline	$3,968.00
Pyla White—for treating petroleum	1,345.00
Paints	13,675.00
"National" Foam Powder A & B (firefighting supplies)	5,205.00
Fire Extinguishers & Recharges for same	263.00
Belting, Shafting, Couplings, etc.	222.00
Bolts, Nuts, Washers, Rivets, Screws, Nails, etc.	148.00
Mild Steel Bars, Plates, Angles, etc.	160.00
Reinforcing Steel, 12 tons	2,160.00
G.I. Roofing, 1600 sheets	2,287.00
Hose, Air, Fire & Oil	1,017.00
Pipes & Pipe Fittings	712.00
Valves & Valve Fittings	2,182.00
Plugs, Drum	995.00
Hand Tools, Brooms, Brushes, Hammers, Locks, etc.	371.00
Drum Washing Machine, Spare	1,247.00
Tank Gauging Equipment (Hydrometers & Thermometers)	74.00
Tank Truck Filling Equipment, Hose, Valves, Fittings, etc.	293.00
Rope, Manila	136.00
Spare parts for "Bliss" Can Making Machines	3,252.00
Spare parts for Compressors, Electric Motors, & Flow Meters	774.00
Spare parts for Conveyors	148.00
Spare parts for Engines, Machine Shop	741.00
Miscellaneous Supplies including soda, soap, waste, etc.; flashlights & batteries, light bulbs, paper dials for watchman clocks, recording meters, etc., roofing paper, roofing cement, etc.	836.00
Total	$42,211.00

(2) Can Manufacturing Supplies

Item	On Hand	Unit
Antimony	242.8	Lbs.
Brushes, Tampico	9,374	Pcs.
Caps, embossed "Cock"	11	Pcs.
Caps, embossed "Pegasus"	38,655	Pcs.
Caps, Litho "Pegasus"	18	Pcs.
Caps, Plain Friction	8,365	Pcs.

[fol. 40]

Item	On Hand	Unit
Copper rod, 1⅛" dia.	8.2	Kilos
Copper solder, pointed	3	Pcs.
Handles, wire	337	Pcs.
Lead, pig	21,370.2	Lbs.
Sal-ammoniac	185.4	Lbs.
Solder No. 1	373.8	Lbs.
Solder No. 2	637.3	Lbs.
Solder Flux	60.0	Lbs.
Tin, pig	9,274.5	Lbs.
T/Plate 10" x 20"	3,748	Cases
T/Plate 10" x 20"	72	Sheets
T/Plate 14¼" x 18⅝"	13,541	Cases
T/Plate 14¼" x 18⅝"	47	Sheets
T/Plate 15" x 20"	17,669	Sheets
Tops, with compression caps	2,430	Pcs.
Wire No. 9	44,276	Lbs.
Zinc Chloride Crys.	1,588	Lbs.

(3) Service Station Equipment, Spare Parts, Materials & Supplies

Quantity	Item
40	G & B Calcometer Elec. Pumps
14	G & B T-3179 Gasoline Pumps
2	G & B T-3177 " "
8	G & B T-3176 " "
22	G & B T-365 " "
5	G & B T-221 " "
3	G & B T-357 " " with tank
8	G & B T-357 " " " " & visible attachment
8	500- gallon Underground Tanks
2	800- " " "
10	1000- " " "
6	1500- " " "
5	Air Compressors, Elec., 3-H.P.
6	" " " 2-H.P.
3	" " " 1½-H.P.
12	" " " 1-H.P.
4	" " " ¾-H.P.
4	" " " ½-H.P.
7	" " " ¼-H.P., M-50
9	" " Engine driven, 1½-H.P.
3	Electric Motors—Spares—3-H.P.
5	" " " 1½-H.P.
3	" " " ½-H.P.
8	" " " ¼-H.P.

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Quantity	Item
48	G & B T-332 L.O. Pumps for Hiboys
21	L.O. Hiboy Tanks, complete with Pump
6	L.O. Tank with Pump—1-bbl. capacity
8	L.O. " " " —2-bbl. "
23	Gear Oil Buckets with Pump—25-lbs. cap.
35	L.O. Pump & Dolly—100-lb. capacity
18	L.O. Drum Pumps—1-liter capacity
4	Mobilubrication Gun Boards complete with Guns & Tools
5	Sets Mobilubrication Guns and Tools without Boards
2	Hydraulic Elec. Car Washers 2-gun
2	Curtis Hydraulic Lifts, free wheel, complete with attachments
6	Garage Jacks Roll-on Hydraulic Walker
12	L.O. Measures—Flexible Spout—1-liter
8	" " " " —2-liter
24	Spare Grease Hose and Nozzle
5	Sets Blackmer Rotary Pumps, complete
5	Sets Seraphin Gasoline Test Measures—1, 2, 5, 10 & 20-liter
3	Sets Seraphin Gasoline Test Measures—25 & 30-liter
60	Lengths Gasoline Hose 1"x12' complete with nozzle
4	Air Towers, complete
6	Ceiling Reels
50	Air Chucks
30	" " with ⅜" coupling
30	" " " ¼" "
500	Feet Air Hose, ⅜"
300	" " " ¼"
200	Feet Washing Machine Hose, 1"
160	Lengths G.I. Pipe—1½"
123	" " " —1"
94	" " " —½"
63	" " " —⅜"
38	" Steel Pipe—10" x 20'
180	Gals. Dupont White Enamel (Duco)
100	" Socony White Enamel
50	" Red Oxide Primer
50	" Grey Metal Primer
83	" Red Pump & Equipment Enamel
15	" Black Pump & Equipment Enamel
72	" Aluminum
70	" Pink Metal Primer
11	" Spar Varnish
50	" Turpentine
75	" Linseed Oil
20	" Walnut Stain
14	" Blue Enamel

[fol. 42]

Quantity	Item
12	Pcs. Wire Brushes
24	" Putty Knives
15	Gals. Red Oxide Powder
2	Kegs Red Cement Powder
12	Pcs. Guijo 4"x14"x24'—1340 bd. ft.
13	" Narra 4"x12"x18'— 936 " "
24	" Guijo 4"x12"x18'—1728 " "
30	" Guijo 6"x 6"x14'—1260 " "
40	" " 2"x 6"x14'— 560 " "
2000	Bd. ft. Lauan 1"x12"x12'
4000	" Tangile ½"x12"x12'
151	Sacks Cement
53	Sheets G.I. 3' x 8'—26 gauge
2	Kegs Nails, ½"
6	" " 1"
3	" " 1½"
4	" " 2"
3	" " 3"
2	" " 4"
2	" " 5"
2	" " 6"
10	Kilos Finishing Nails, ½"
10	" " " 1"
8	" " " 1½"
5	" " " 2"
	Misc. spare parts, valves, meters, gauges, fittings, etc. for service station equipment—estimated
35	Pcs. Mobilgas Enameled Shield Signs, double face, 3x3
10	" Mobilgas Enameled Shield Sign Brackets
5	" " " " " Steel Posts
16	" Mobiloil Target Signs
15	Sets L.O. Stands with Drip Pan & 3 5-gal. Drums & Faucet
100	Pcs. Gasoline Pump Globe Frames
200	" " " " Discs
10	" L.O. Pump Gloves
7	Tons Reinforcing Steel Bars (for service station building construction)
2	Bowser Underground Aviation Refueling Units complete with 5 H.P. Motor Pumps, Piping Valves, Meters, Strainers Hose Reel and Accessories

(4) Empty Gasoline Drums

1,850	55-Gallon—14 gauge
4,061	55-Gallon—18 gauge

[fol. 43]

Exhibit C to Petition

Plant and Equipment (Including Buildings, Land Improvements, Walls, Fences and Embankments, Wharves and Waterfront Equipment, Sewerage and Drainage and Other Plant and Equipment) Referred to in Paragraph 4(c) of the Petition

(1) Buildings

Use	Construction Type
Warehouse	No. 1—150'x155'x22', concrete foundation and floor, wooden frame, G.I. roof and sides
Warehouse	No. 2—100'x230'x22', concrete foundation and floor, wooden frame, G.I. roof and sides, wooden floor over concrete, with balconies
Warehouse	No. 3—38'x89'x16', concrete foundation and floor, wooden frame, G.I. roof and sides
Warehouse	No. 4—39'x178'x14'9", concrete foundation and floor, wooden frame, G.I. roof and sides
Warehouse	No. 5—80'x100'x24', concrete foundation and 1st floor, wooden frame and 2nd floor, G.I. roof and sides, with wallboard partitions and 1st class toilet on 1st floor
Warehouse	No. 6—25'x50'x12', concrete foundation and floor, wooden frame, G.I. roof and sides
Warehouse	No. 7—100'x200'x20', concrete foundation and floor, steel frame, G.I. roof and sides
Warehouse	No. 8—15'x45'x13', concrete foundation and floor, steel frame, G.I. roof and sides
Drum Filling Shed	40'x130'x10', concrete foundation and floor, wooden frame, G.I. roof and sides
Lub. Oil Blending and Filling Shed	65'x67'x10' with addition 20'x22'x10', concrete foundation and floor, wooden frame, G.I. roof and sides
Storage Shed	25'x50'x10', concrete foundation and floor, wooden frame, G.I. roof and sides
Carpenter Shop	15'x60'x10', concrete foundation and floor, wooden frame, G.I. roof and sides
Paint Shop	20'x40'x10', concrete foundation and floor, wooden frame, G.I. roof and sides
Drum Filling Shed	20'x80'x10', concrete foundation and floor, wooden frame, G.I. roof and one side, 2" wood plank floor over concrete ½ area; with addition 8'x8'x8', same construction except enclosed 4 sides

[fol. 44]

Use	Construction Type
Drum Storage and Cleaning Shed	40'x80'x10', concrete foundation and floor, wooden frame, G.I. roof, open sides
Drum and Tin Filling Shed	30'x93'x12', concrete foundation and floor with wooden plank and concrete ramp 31' wide on entrance, wooden frame, G.I. roof and 3 sides (1 side open)
Ethyl Gasoline Blending Bldg.	30'x62'x12', concrete foundation and floor, wooden frame, G.I. roof, with 61 lineal feet siding, 123 lineal feet sides enclosed with G.I. wire screen #14 gauge, 1" mesh, with fire wall inside, 6" thick x 30' wide x 12' high and 3 sets built-in lockers (2 lockers per set); 1 G.E. 5-gal. electric water heater, 220 volts, A.C. 60 cycle, 1 phase; and 1 wash basin and shower
Storage Shed	55'x205'x10', concrete foundation and floor, wooden frame, G.I. roof, open sides
Storage Shed	55'x154'x10', concrete foundation and floor, wooden frame, G.I. roof, open sides, with extension 1,073 sq. ft. concrete floor
Storage Shed	30'x532'x10'6", concrete foundation and floor, wooden frame, G.I. roof and 3 sides, with addition 16'x240'x10'6", same construction
Storage Shed	16'x45'x10', concrete footings, dirt floor, wooden posts and roof framing, G.I. roof, open sides
Storage Shed	18'x46'x10', concrete footings and floor, with 2" wooden plank over concrete, wooden Frame, G.I. roof, open sides
Storage Shed	15'x18'x10', concrete footings and floor, wooden frame, G.I. roof, open sides
Storage Shed	14'x16'x13', concrete footings, wooden frame, G.I. roof
Midden Shed	15'x20'x10', concrete foundation, floor and sides, wooden frame, G.I. roof
Midden Shed	6'7"x31'x10', concrete foundation, floor and sides, wooden frame, G.I. roof, with septic tank and sewer line to Estero Beata
Midden Shed	12'x15'x12', concrete foundation, floor and 3 sides, wooden frame, G.I. roof
Midden Shed	8'x12'x10', concrete foundation, floor and 3 sides, wooden frame, G.I. roof
Engine House	35'x61'x13', concrete foundation and floor, wooden frame, G.I. roof and sides, with hyrib partition around pump room
Pump House	10'x12'x13', concrete foundation and floor, wooden frame, G.I. roof and sides

[fol. 45]

Use	Construction Type
Pump House	12′x24′x10′, concrete foundation, floor and walls, G.I. roof
Residence	No. 1—One-story, main building 40′x68′x12′, with extensions 18′x20′x12′, 7′x12′x10′, and 9′x14′x12′, concrete foundations, wooden frame, floor and sides, G.I. roof
Residence	No. 2—One-story, main building 40′x58′x12′, with extension 10′x40′x10′, concrete foundations, wooden frame, floor and sides, G.I. roof
Residence	No. 3—One-story, main building 22′x44′x11′, with extensions 17′x23′x11′, 20′x25′x11′, 17′x21′x11′, and 6′x17′x11′, concrete foundations, wooden frame, floor and sides, G.I. roof
Residence	No. 4—One-story, main building 20′x22′x12′, with extension for toilet and bathroom, concrete foundation, wooden frame, floor and sides, G.I. roof
Residence	10 one-story buildings, each 16′x20′x11′, concrete foundation and footings, wooden frame, floor and sides, G.I. roof
Toilet & Bath	6′x8′x10′, concrete foundation and floor, wooden frame, G.I. roof and sides
Storehouse	65′x83′x20′, concrete foundation and floor, steel frame, G.I. roof and sides
Can-Shop	40′x100′x13′, concrete foundation and floor, steel frame, G.I. roof and sides
Filling House	60′x100′x13′, concrete foundation, concrete and wooden floor, steel frame, G.I. roof and sides
Runway	20′x30′x13′, concrete foundation and floor, steel frame, G.I. roof and sides
Runway	12′x30′x10′, concrete foundation, wooden frame, G.I. roof and sides
Garage	58′x95′x16′, concrete foundation and floor, wooden frame, G.I. roof and sides
Garage	35′x60′x11′, concrete foundation and floor, wooden frame, G.I. roof and 3 sides, open front
Box Factory	35′x140′x10′, concrete foundation and floor, wooden frame, G.I. roof and sides, with addition 8′4″x144′ for media agua, wooden frame and G.I. roof
Parking Shed	15′x28′x12′, concrete foundation, dirt floor, wooden frame, G.I. roof, open sides
Combined Electrical Control and Watchman's Building	Reinforced concrete construction throughout

Use	Construction Type
ir Raid helter	Reinforced concrete construction throughout
ir Raid helter	Reinforced concrete construction throughout

2) Land Improvements; Walls, Fences and Embankments; Wharves and Waterfronts

Number Or Quantity	Kind And Description In Detail
	Roadway, gravel
	Roadway
	Roadway in front of Godown No. 6
	Paving and walks
	Concrete pavement, 1,692 sq. ft.
	Concrete pavement around Shed No. 2
	Concrete pavement, 12,513 sq. ft.
	Concrete driveway, 4,563 sq. ft.
	Firewall, concrete, around Godown No. 1
	" " " " No. 2
	Fence, National, 1,081 lineal feet, 6' high, with three strands, barbed wire on top
	Firewall, concrete, around Tank No. 1, 144 ft.
	" " " " No. 2, 144 ft.
	Firewall, dirt, around Tank No. 3, 756 ft.
	" " " " No. 4, 756 ft.
	" " " " No. 5, 756 ft.
	Fence, "Cyclone" wire, 5,971 lineal feet, 6' high, with three strands, barbed wire on top
	Fence, "Cyclone" wire, 200 lineal feet, 6' high, with three strands, barbed wire on top
	Fence, "Cyclone" wire, 350 lineal feet, 6' high, with three strands, barbed wire on top
	Fence, "Cyclone" wire, 175 lineal feet, 6' high, with three strands, barbed wire on top
	Firewall, concrete, around Tank No. 6, 177 ft.
	" " " " No. 7, 177 ft.
	" " " " No. 10, 183 ft.

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Number Or Quantity	Kind And Description In Detail
	Firewall, dirt, around Tank No. 8, 924 ft.
	" " " " No. 9, 1,198 ft.
	Fence, "Cyclone" wire, 737 lineal feet, 6' high, with three strands, barbed wire on top
	Firewall, concrete, 111 lineal feet, 5' high, 6" thick, around tanks 16 and 18
	Fence, 800 lineal feet, U.S. steel "Cyclone" galvanized copper, No. 9 gauge, 2" mesh, 6' high, with 73 U-steel posts, set in concrete and U.S. steel "Cyclone" galvanized copper bearing iron gate, 52" wide
	Firewall, adobe, for Godown and Drum Plant
1	Pier, 42' x 12', wooden deck, frame and 8 creosoted piles, and deck house, G.I. roof, open sides
1	Pier, 25' x 16', wooden deck, frame and 6 creosoted piles
	Drainage system
	" "
	" "
	Sewerage and drains
1	Septic tank, adobe stone, servants' quarters
1	Septic tank, adobe stone, and concrete top
2	Septic vaults, concrete, capacity 50 persons

(3) Other Plant and Equipment

	Railroad Siding
3	Switches, complete, 12 lbs.
17	Switches, complete, 16 lbs.
3	Switches, complete, 16 lbs.
3,281 ft.	Service Track, 24" Gauge, 12 lbs.
180 ft.	Service Track, 24" Gauge, 12 lbs.
725 ft.	Service Track, 24" Gauge, 16 lbs.
3,237 ft.	Service Track, 24" Gauge, 16 lbs.
165 ft.	Service Track, 24" Gauge, 12 lbs.
673 ft.	Service Track, 24" Gauge, 16 lbs.
448 ft.	Service Track, 24" Gauge, 12 lbs.
148 ft.	Service Track, 24" Gauge, 16 lbs.
28	Cars

umber Or Quantity	Kind And Description In Detail
19	Cars
1	Lub. oil blending tank, 36"x5'6", fitted with baffle plates and agitating equipment
1	Lub. oil blending tank, 36"x5'6", fitted with baffle plates and agitating equipment
1	Storage tank No. 1, 20'x20', riveted, with self-supporting cone roof
1	Filling tank No. 10, 20'x20', riveted, with self-supporting cone roof
1	Storage tank No. 3, 93'x30', riveted, with self-supporting cone roof
1	Storage tank No. 4, 93'x30', riveted, with self-supporting cone roof
1	Storage tank No. 5, 93'x36', riveted with self-supporting cone roof
1	Water trap, gasoline, 24"x36"
1	Water trap, refined oil, 24"x36"
1	Storage tank No. 6, 31'x27', riveted, with self-supporting cone roof
1	Storage tank No. 7, 31'x27', riveted, with self-supporting cone roof
1	Water trap, gasoline, 36"x5'6", fitted with baffle plates
1	Storage tank No. 8, 115'x35', riveted, with "Wiggins" pontoon floating roof
1	Storage tank No. 9, 115'x35', riveted, with "Wiggins" pontoon floating roof
1	Blending tank, 5'6"x6'10", fitted with baffle plates and agitating equipment
1	Pressure tank No. 2, 20'x20', pressure type, riveted, with self-supporting dome roof, special reinforced bottom and automatic gauging equipment
1	Storage tank No. 11, 31'x27', riveted, with self-supporting cone roof
1	Storage tank No. 12, 31'x27', riveted, with self-supporting cone roof
1	Gasoline storage tank No. 14, 54'x35', welded, with 6' gasometer roof
1	Storage tank No. 15, 18'x30', welded, with self-supporting cone roof
1	Storage tank No. 16, 12'x24', welded, with self-supporting cone roof

[fol. 49]

Number Or Quantity	Kind And Description In Detail
1	Compressed air receiver, 28″x72″
1	Compressed air receiver, 28″x72″
1	Storage tank No. 17, 40′x42′, riveted, with self-supporting cone roof
1	Filling tank No. 18, 18′x24′, welded, with self-supporting cone roof
1	Storage tank No. 19, 24′x36′, welded, with self-supporting cone roof
1	Storage tank No. 20, 24′x30′, welded, with self-supporting cone roof
1	Storage tank No. 21, 18′x30′, welded, with self-supporting cone roof
1	Storage tank No. 22, 102′x36′, welded, with gasometer roof
1	Foundation for Tank No. 1, reinforced concrete ring, 22′ dia. x 9′ high x 8″ thick, with reinforced concrete base, 36″x12″, four reinforced concrete buttresses, sand fill
1	Foundation for Tank No. 2, reinforced concrete ring, 22′ dia. x 9′ high x 8″ thick, with reinforced concrete base, 36″x12″, four reinforced concrete buttresses, sand fill
1	Foundation for Tank No. 3, reinforced concrete ring, 101′ dia. x 4′ high x 5″ thick, with reinforced base, 24″x12″, concrete apron and sand fill
1	Foundation for Tank No. 6, reinforced concrete ring 32′4″ dia. x 8′ high x 8″ thick, with reinforced base, 24″x12″, sand fill
1	Foundation for Tank No. 7, reinforced concrete ring, 32′4″ dia. x 8′ high x 8″ thick, with reinforced base, 24″x12″, sand fill
1	Foundation for Tank No. 8, reinforced concrete ring, 123′ dia. x 4′ high x 5″ thick, with reinforced base, 24″x12″, concrete apron and sand fill
1	Foundation for Tank No. 9, reinforced concrete ring, 123′ dia. x 4′ high x 5″ thick, with reinforced base, 24″x12″, concrete apron and sand fill
1	Foundation for Tank No. 10, reinforced concrete ring, 22′ dia. x 9′ high x 8″ thick, with reinforced base, 24″x12″, sand fill
1	Foundation for Tank No. 11, reinforced concrete ring, 32′4″ dia. x 8′ high x 8″ thick, with reinforced base, 24″x12″, sand fill

[fol. 50]

Number Or Quantity	Kind And Description In Detail
1	Foundation for Tank No. 12, reinforced concrete ring, 32'4" dia. x 8' high x 8" thick, with reinforced base, 24"x12", sand fill
1	Foundation for Tank No. 14, reinforced concrete ring, 62' dia. x 4' high x 5" thick, with reinforced base, 24"x12", concrete apron and sand fill
1	Foundation for Tank No. 15, reinforced concrete ring, 22' dia. x 9' high x 8" thick, with reinforced base, 24"x12", sand fill
1	Foundation for Tank No. 16, reinforced concrete ring, 14' dia. x 9' high x 8" thick, with reinforced base, 24"x12", sand fill
1	Foundation for tank No. 17, reinforced concrete ring, 48' dia. x 4' high x 5" thick, with reinforced base, 24"x12", concrete apron and sand fill
1	Foundation for tank No. 18, reinforced concrete ring, 19'4" dia. x 7'6" high x 8" thick, with reinforced base, 24"x12", sand fill
1	Foundation for tank No. 19, reinforced concrete ring, 26' dia. x 8' high x 10" thick, with reinforced base, 24"x12", sand fill
1	Foundation for tank No. 20, reinforced concrete ring, 26' dia. x 8' high x 10" thick, with reinforced base, 24"x12", sand fill
1	Foundation for tank No. 21, reinforced concrete ring, 20' dia. x 8' high x 8" thick, with reinforced base, 24"x12", sand fill, including reinforced concrete firewall
1	Foundation for tank No. 22, reinforced concrete ring, 110' dia. x 4' high x 5" thick, with reinforced base, 24"x12", concrete apron, sand fill
136 ft.	Petroleum pipe lines, 6"
46 ft.	" " " 2"
449 ft.	" " " 6"
4,412 ft.	" " " 8"
50 ft.	" " " 2"
264 ft.	" " " 4"
78 ft.	" " " 8"
378 ft.	" " " 4"
1,047 ft.	" " " 6"
13 ft.	" " " 8"
178 ft.	" " " 4"

[fol. 51]

Number Or Quantity	Kind And Description In Detail
301 ft.	Petroleum pipe lines, 6"
112 ft.	" " " 8"
416 ft.	" " " 4"
1,227 ft.	" " " 6"
1,086 ft.	" " " 8"
182 ft.	" " " 3"
282 ft.	" " " 4"
82 ft.	" " " 3"
186 ft.	" " " 4"
62 ft.	" " " 6"
1,744 ft.	" " " 4"
1,762 ft.	" " " 6"
1,314 ft.	" " " 8"
20 ft.	" " " 2½"
896 ft.	" " " 4"
1,977 ft.	" " " 6"
135 ft.	" " " 119'—4", 9'—2½", 7'—2"
408 ft.	Water pipe lines, 4"
1,953 ft.	" " " 6"
837 ft.	" " " 8"
1,174 ft.	Water pipe lines, 10"
125 ft.	" " " 12"
78 ft.	" " " 3"
115 ft.	" " " 6"
722 ft.	" " " 6"
90 ft.	" " " 3"
1,382 ft.	" " " 2½"
290 ft.	Steam pipe lines, 1½", with lagging
4 lgths.	Petroleum rubber hose, 2" x 20'
2 lgths.	" " " 3" x 15'
1 lgth.	" " " 8" x 20'
3 lgths.	" " " 8" x 15'
4 lgths.	Petroleum flexible hose, 1½" x 10'
2 lgths.	Petroleum rubber hose, 8" x 15'
6 lgths.	" " " 6" x 20'
1 lgth.	Petroleum rubber hose, 6" x 20'
8 lgths.	" " " 6" x 20'
2 lgths.	" " " 8" x 15'

[fol. 52]

Number Or Quantity	Kind And Description In Detail
1 lgth.	Fire Hose, 2½" x 50'
5 lgths.	" " 2½" x 50'
3 lgths.	" " 2½" x 50'
5 lgths.	" " 2½" x 50'
6 lgths.	" " 2½" x 50'
2 lgths.	" " 2½" x 50'
9 lgths.	" " 2½" x 50'
6 lgths.	Steam hose, 2—1½" x 10', 4—1½" x 20'
9 pcs.	Nozzles, fibre
20 pcs.	Nozzles, bronze
2 pcs.	Tank manifold, 8"
2 pcs.	Flow meter oil, 3"
12 sets	Coupling for fire hose
6 pcs.	Nozzles, bronze
1 pc.	Oil Meter, 3"
1 pc.	Filter, diesel oil
1 pc.	Flow meter, gasoline, 4", complete with strainer and air eliminator
1 pc.	Fire hose, nozzle, 2½"
	Pipe fittings and manifolds
1	Engine, De La Vergne, No. 10393, type DH, Serial No. 278, 40-HP, including foundation and installation
1	Engine, De La Vergne, No. 25567, type DH, Serial No. 500, 40-HP, including foundation and installation
1	Engine, De La Vergne, No. 26952, type DH, twin-cylinder (Nos. 459/460), 130-HP
6	Tanks, cooling water, 46"x96"x⅛", for engines, including foundations
1	Tank, 20"x60", compressed air, with safety valve 175/200 lbs., and air gauge 300 lbs., for engine
1	Engine, Ruston, type HR, Serial No. 159393, 10-HP, including foundation and installation
1	Engine, Fairbanks, type Z, Serial No. 764914, 2-HP
2	Tanks, steel, 46" dia. x 8' high x ⅛" thick, cooling water, for engines, including foundations
1	Pump, Gould's, 11"x24", Fig. 1590, serial No. 40434, with 1 air pressure gauge, 100 lbs. including foundation and installation
1	Pump, Gould's, 9"x12", Fig. 1605, serial No. 40435, with 1 air pressure gauge, 100 lbs., including foundation and installation

[fol. 53]

Number Or Quantity	Kind And Description In Detail
1	Pump, Gould's, Fig. 562, No. 12, 2½", Challenge
1	Pump, Marvel, rotary (5 liters)
1	Pump, Worthington, single stage, centrifugal, type "C", 2" suction and 1½" discharge, Serial No. 64[illegible]15-W
1	Car Washer, Curtis, with 1 HP Wagner electric motor, type 76V7KA, 220 volts A.C.
1	Pump, Gould's, Fig. 562, No. 12, 2½", Challenge
1	Air compressor, Curtis, with 1 HP Wagner electric motor, type 76Y6KA, 220 volts, A.C. serial No. 104992
1	Blower for can manufacturing
1	Pump, Gould's, Fig. 562, Challenge, No. 12, 2½"
1	Pump, Gould's, Fig. 562, Challenge, No. 16, 2½"
1	Pump, Worthington, centrifugal, serial No. 846178, direct connected to 1 HP, 220 volts, A.C. electric motor, serial No. 107438
1	Pump, Viking Rotary, model BP, belt drive, 4" suction, 3" discharge, including installation
1	Pump, Fairbanks-Morse, centrifugal, 2" suction, 1½" discharge, serial No. 177969, direct connected to 1-3 HP, 220 volts, A.C. electric motor, serial No. 106170, including installation
1	Pump, American-Marsh, centrifugal, type AM
1	Gun, alemite grease, type H-15
1	Filler, lubricating oil, Aro, model 15, portable
1	Flusher, fly, complete with ¼ HP electric motor
1	Motor, electric, 3 HP, 220 volts, A.C., serial No. 22532, including connection and installation
1	Pump, Blackmer, centrifugal, for Drum Washing Machine
1	Pump, Viking Rotary, model TKK, 2"
1	Pump, Blackmer, type 100, with electric motor, G.E., 5 HP, 2 phase, 60 cycle, 220 volts, A.C., including connection and installation
1	Pump, Viking Rotary, 6" suction and 5" discharge, with 2- 26"x12"x2-7/16" pulleys, for refined oil, including installation
1	Pump, Viking Rotary, Model EQ, 3" suction and 3" discharge, Serial No. 2282058, capacity 200 gals. per minute at 375 R.P.M., direct connected with one 10 HP Wagner electric motor, type RP-1, 2 phase, 220/440 volts, 60 cycle,

[fol. 54]

Number Or Quantity	Kind And Description In Detail
	A.C., 1750 R.P.M., Model No. W-30-B-210-B, Serial No. 1737582, including installation
1	Pump, Viking Rotary, Model K-115, Serial No. 2281378, 1½" suction and 1½" discharge, capacity 30 gallons per minute at 330 R.P.M., direct connected with one 2 HP Wagner electric motor, type RP-1, 2 phase, 220 volts, 60 cycle, A.C., Model No. 4-E-10-B-374, Serial No. 3-R-43341, including electric wiring for motor and installation
1	Fairbanks-Morse, Fig. 5531, 2" side suction, centrifugal pump, with bronze impeller, direct connected with G.E. Model 5K 225-A-2271 K 225 motor, 5 HP, 1800 R.P.M., Serial No. 987742-380428, 220 volts, 2 phase, 60 cycle, explosion proof, with one starter switch, G-E, CR-7006-#4389802, G-103, 2 heater units #81, D-26 and one #4981612 C2-CR-2941 F2 remote control "start stop" button, including electric wiring for motor, concrete foundation and installation
1	Pump, Rotary Viking, model KK86, serial No. 2350329, with Wagner induction motor, type RP-1, model 1K14B372, 220/440 volts, 2 phase, 60 cycle, serial No. 3827215, including connection and installation
1	Connel & Dengler box printing machine, 20", single color, complete with side printing die and end printing die, "Comet"
1	Bliss No. 2 power squeezer, with self-centering device, Order No. 10418, Ser. No. 56829.
1	Bliss No. 2 power squeezer, with self-centering device, Order No. 10419, Ser. No. 56830
1	Bliss No. 2 power squeezer, with self-centering device, Order No. 10413, Ser. No. 56843
1	Bliss No. 2 power squeezer, complete, Order No. 5112, Ser. No. 59209
1	Bliss No. 12 press, for caps and handle clips, Ser. No. 56834
1	Bliss No. 21 press, top & bottom, complete with scrap strippers, Order No. 10419, Ser. No. 56824
1	Bliss No. 21 press, top & bottom, complete with scrap strippers, Order No. 10419, Ser. No. 56825
1	Bliss No. 30 press, complete with trimming die and upper knife block, Order No. 5110, Ser. No. 59199

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Number Or Quantity	Kind And Description In Detail
1	Bliss No. 30 press, with panel die, Order No. 5110, Ser. No. 59200
1	Bliss No. 30 press, with panel die, Order No. 5112, Ser. No. 59208 and installation cost
1	Bliss No. 39 double horn press, Order No. 10419, Ser. No. 56827
1	Bliss No. 39, double horn press, Order No. 10419, Ser. No. 56828
1	Bliss No. 18 press, with caps and clips
1	Bliss trimming and forming die.
1	Bliss No. 150 wire handle machine, Order No. 10419, Ser. No. 56832
1	Bliss No. 157 seam roller, Order No. 10419, Ser. No. 56861
1	Bliss No. 300 squaring shear, Order No. 10419, Ser. No. 56833
1	Bliss roll hemming machine, Order No. 10419, Ser. No. 56826
1	Bliss set of 4 trimming knives
1	Rhodes top press, Ser. No. 1990
1	Soldering machine, side seam
3	Pyrometers with 3 meters wire each for soldering machines
1	Aciding machine
1	Solder furance, complete with 1 melting pot, 3 cast iron moulds, and 1 cast iron moulding table
1	5-gal. combination die—"Comet"
1	5-gal. combination die—"Cock"
2	5-gal. bottom dies—"Star"
1	5-gal. top die—gasoline
1 set	6 pcs. inserts—top die gasoline
1 set	Cock flat cap die inserts
1 set	2 pcs. inserts—panel die
1 set	Inserts for "Comet" top die
1 set	Inserts for panel die
1	Lathe, complete with face plate jaws, 26"x12", Niles Bement Pond No. 66292
1	Fairbanks shaper, crank, standard, 24", Serial No. B-2976
1	D. Saunders pipe cutting and threading machine
1	Toledo No. 2 pipe threading machine

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Number Or Quantity	Kind And Description In Detail
1	Toledo No. 3 pipe threading machine
1	Toledo No. 4 pipe threading machine
1 set	Taps and dies—"Greenfield"
1	Bench vise, No. 308—"Reed"
1	Pipe vise, 4"—"Erie" No. 3
1	Pipe vise—"Jarecki" No. 10
1	Machinist vise
1	Fairbanks drill press—Sibley Machine Co.
1	Drill press—vise, No. 7½ Skinner
1	Chuck, Jacobs drill
1	Stanley portable electric drill, Serial No. 5026, Motor No. 1052380
1	Stanley electric drill, with motor—220 volts, A.C., 1 phase, 60 cycle—Serial No. 342
1	Stanley electric bench grinder
1	Fairbanks No. 6 grinder, St. Louis
1	Blacksmith forge, Buffalo No. 660
1	Blacksmith anvil, Buffalo No. 258n
1	6-ton Weaver auto jack
1	Filling machine, 1/5 drum
1	Filling machine, 4-can—"Crandall"
1	Filling machine, 55-drum
1	Filling machine, 12-can—"Atlantic"
1	Filling machine, 50-gal.—"2 Hopper"
1	Conveyor for 50-gal. "Hopper" filling machine
4	Fillers, automatic barrel, 1½"
1	Volumetric filling machine with gasometer tank, 5-tin
1	Garrard No. 3128 wire tying machine
1	Garrard wire binding machine, Model B
1	Crown paint spraying machine, complete, Serial No. 4026, Motor No. 1052380
1	Crown paint spraying machine, complete, Serial No. 6263, Motor No. 1051933
2	Drum washing machines
1	Phomene fire engine, 40-gal.
1	Foamite fire engine
1	Mask, No. EB-6612 MSA, 1-man combination hose, 50'1" oil proof hose
1	Cadwell lawn mower, gasoline motor driven

Number Or Quantity	Kind And Description In Detail
1	Welding outfit—Meco, acetylene
1	Lincoln welding machine, Serial No. A20640, frame SA-75, 3 HP, 220-440 volts, 75 amp.
1	Level, engineer's Y, K & E, type No. 5007, Serial No. 27346
1	Transit, K & E, Type No. 5007, Serial No. 22817
1	Chain block, Yale & Towne
1	Chronometer, Saybolt No. 1061
1	1½-ton hoist, spurgeared Wright, Model BB
2	2-ton trolleys with framework
1	Gas indicator, MSA, combustible, complete with sampling line, filaments and probe tubes
1	Steel kettle, 25" diameter, for heating asphalt
	Shaftings, pulleys and hangers
	Shaftings, pulleys and hangers
	Shaftings, pulleys and hangers
	Shaftings, pulleys and hangers
1	Fairbanks scale No. 5, 800 kilos capacity
1	Fairbanks scale No. 13, 700 kilos capacity
1	Fairbanks scale No. 23, 720 kilos capacity
1	Howe scale No. 20, 1100 kilos capacity
1	Howe scale No. 21, 1,100 kilos capacity
1	Howe scale No. 22, 1,100 kilos capacity
1	Howe scale No. 826, 500 kilos capacity
1	Toledo scale No. 23692, Model No. S-21
1	Platform scale No. 1, 320 kilos capacity
1	Platform scale No. 2, 500 kilos capacity
1	Platform scale No. 3, 300 kilos capacity
1	Platform scale No. 4, 550 kilos capacity
1	Platform scale No. 6, 125 kilos capacity
1	Platform scale No. 7, 125 kilos capacity
1	Platform scale No. 8, 123 kilos capacity
1	Platform scale No. 10, 12 5 kilos capacity
1	Platform scale No. 11, 120 kilos capacity
1	Platform scale No. 12, 120 kilos capacity
1	Platform scale No. 14, 150 kilos capacity
1	Platform scale No. 15, 123 kilos capacity
1	Platform scale No. 17, 125 kilos capacity
1	Platform scale No. 19, 4000 kilos capacity

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Number Or Quantity	Kind And Description In Detail
1	Platform scale No. 24, 120 kilos capacity
1	Platform scale No. 26, 300 lbs. capacity
1	Platform scale No. 27, 2000 kilos capacity
1	DeVilbiss portable electric spray painting outfit, Type NK 616, Serial No. 43925, complete with 1 ½ HP G.E. electric motor, Model 5SCR65AA22, No. 1812748, 220 volts, 60 cycle, 1 phase
2	Blowers for soldering machine and installation cost
1	Chain hoist, "Wright", high speed, Type BB, geared, 1½-ton capacity
2	National foam engines, 40-gal. capacity each
	Equipment for handling multiple package tinplate, consisting of 3 3-ton capacity "Reading" geared cranes, equipped with 2 1½-ton capacity trolleys, Serial Nos. 1484, 1485 and 1486
2	1½-ton capacity "Reading" chain hoists, 7' lift
2	Stacking cradles
3	Crane runaways, complete with required columns and brackets, and installation cost
1	Top and bottom soldering machine, complete with 3 sets thermo-coupler electric indicators, smoke stacks and solder melting stoves including shaftings, pulleys and beltings, and installation cost
	Equipment for blending lubricating oils, consisting of 1 mixing tank 3'6" wide x 3'6" deep x 7' long, and pipe and fittings
1	Handle clip soldering machine, complete with pulleys and belting
1	2 Hopper volumetric filling machine
1	4 Hopper volumetric filling machine
1	Ethyl eductor unit (mixing plant includes pipe and fittings, pressure and vacuum gauges, and flexible gasoline hose)
1	Howe scale No. 826, 500 kilos capacity
1	Bowser meter filling machine, Fig. No. 2766A, 1½", with No. 730 strainer and 753-C air release, including installation cost
	Equipment for making friction caps, consisting of 8 closing tools with spare parts, 1 set of 2 operation cap dies with spare parts, 1 cap die cover and 1 machine for applying sealing compound

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Number Or Quantity	Kind And Description In Detail
1	Hydrostatic drum dedenting machine, complete with rectangular open top, 3'6" wide x 5'6" long x 1'6" deep, No. 18 gauge, G.I. tank, pressure gauge, and 1 Fairbanks-Morse Fig. 5510, 1" pump, 1½" suction, and 1" discharge direct connected to a Wagner electric motor, ½ HP, 220 volts, 60 cycle, 1 phase, mounted on steel base
1	Friction cap expanding machine
1	Top and bottom aciding machine and installation cost
1	Howe platform scale, 500 kilos capacity
1	Wiring machine, Model B
1	Hydrostatic drum-dedenting machine, complete with rectangular open top 3'6" wide x 5'6" long x 1'6" deep, No. 18 gauge, G.I. tank, pressure gauge
1	Pump, Fairbanks-Morse, Fig. 5510, 1"-1½" suction, 1" discharge, directly connected to a Wagner electric motor, ½ HP, 220 volts, 60 cycle, 1 phase mounted on steel base
1	Set Meco oxy-acetylene welding outfit
9	Yard Lights including wiring and poles
5	Telephones, magneto, wall
3	Flood lights, 16"
1	" " 13½"
2	" " 11"
1	" " 10"
1	" " 11"
5	Yard lights including wiring and poles
2	Flood lights, 11"
10	Yard lights including wiring and poles
1	Electric power line, 2 phase, for Electric Welding Machine
8	Flood lights, 11"
6	" " 13½"
16 secs.	"Matthews" gravity conveyors, 8 ft. long, 12" wide; rollers, 2¼" diam., 4" spacing
2 curves	"Matthews" gravity conveyors, 90 degrees, 12" wide; rollers, 2¼" diam., 4" spacing
20 secs.	"Lamson" gravity conveyors, 10 ft. long, 16" wide; rollers, 2½" diam., 3" spacing
7 secs.	"Lamson" gravity conveyors, 10 ft. long, 16" wide; rollers, 2½" diam., 4" spacing

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Number Or Quantity	Kind And Description In Detail
4 secs.	"Matthews" gravity conveyors, 8 ft. long, 12" wide; rollers, 1⅝" diam., 2" spacing
30 secs.	"Lamson" gravity conveyors, 10 ft. long, 16" wide; rollers, 2½" diam., 4" spacing
10 secs.	"Matthews" gravity conveyors, 8 ft. long, 12" wide; rollers, 1⅝" diam., 2" spacing
3 curves	"Matthews" gravity conveyors, 90 degrees, 12" wide; rollers, 1⅝" diam., 2" spacing
30 secs.	"Lamson" gravity conveyors, 10 ft. long, 14" wide; rollers, 2½" diam., 3" spacing
12 secs.	"Lamson" gravity conveyors, 10 ft. long, 16" wide; rollers, 2½" diam., 3" spacing
1	Covered conveyor, 80 ft. long, steel frame, G.I. roof, between Godown Nos. 3 and 4
1	Steel framing, 179 ft. long, for conveyor, built in Godown No. 4 (conveyor not included)

[fol. 61] EXHIBIT D TO PETITION

Tank Cars, Trucks and Floating Equipment
Referred to in Paragraph 4(d) of the Petition

(1) TANK AND PACKAGE TRUCKS

International Package Truck, Model D-15, 130" wheelbase, w/5 Wheels, U. S. built Steel Cab, Chassis No. D-15-4105-R, Motor No. HD-213-A

GMC Package Truck, Model T-18-C, W/Cab, Factory No. T-18-24433, Motor No. 12397483, Serial No. K-8896

Reo Package Truck, Model 2-J-5, w/Cab, Motor No. 24-B-9349, Serial No. 2552

Dodge Tank Truck, Model RK-62-024, w/Cab, Chassis No. 8763674, Motor No. T-43-1345, complete w/Heil Elliptical Tank, 4000 liters capacity, 4 compartments

White Tank Truck, Model 712, 190" Wheelbase, Serial No. 208344, Engine No. 1947, complete w/Heil Elliptical Tank, 4950 liters capacity, 5 compartments

White Tank Truck, Model 712-R-1496, Engine No. 23331, 190" Wheelbase, Serial No. 210907, complete with Heil Elliptical Tank, 5050 liters capacity, 5 compartments

Ford V-8 Tank Truck Chassis, 4 Tons, 181" Wheelbase, 85-HP, Model 917-T, 1939, with tools, equipped with Fabco Extension, Auxiliary Springs Heavy Duty, Cooling Efficiency Dual for Belts, with Hydraulic and Hand Mechanical Brakes, mounting 6-7.50x20 Bus Balloon Tires on all 7 wheels, Dual Rear, with U.S. Steel Cab installed, Motor No. BB-18-F-4846626

Ford V-8 COE Package Truck, Stake Body, 134" Wheelbase, Model 09W-1940, 95-HP, Motor No. 99-TF-116079, locally made Steel Cab, Standard Tools, equipped with Auxiliary springs, Heavy Duty Cooling Efficiency, Hydraulic and Hand Mechanical Brakes, 7 Wheels complete with 7.50x20 Bus Balloon Tires

Ford V-8 COE Package Truck, Stake Body, 134" Wheelbase, 95-HP, Motor No. 99-TF-147020, Dual Rears, complete with 7.50x20 8-ply tires, 7" Rims, One Spare Wheel, with locally built closed steel cab and locally built all-steel case body, equipped with Handy Governor

Ford V-8 COE Tank Truck, 95-HP, 134" Wheelbase, with closed cab, Auxiliary Rear Springs, 7.50x20 8-ply Tires, Dual Rears, 7" Rims, one Spare Wheel, Motor No. 99-TF-148611, complete with Heil Elliptical Tank, 4000 liters

capacity, 4 compartments, equipped with Neptune 3"x2½" [fol. 62] Special Auto-Stop Red Seal Compact Meter, Calibrated in Liters, 2 lengths Maltese Cross Hewprene Tank Truck Hose 2½" x 11', and Handy Governor

Ford V-8 COE Tank Truck, 95-HP, 134" Wheelbase, with closed Cab, Auxiliary Rear Springs, 7.50x20 8-ply Tires, Dual Rears, 7" Rims, one Spare Wheel, Motor No. 99-TF-148612, complete with Heil Elliptical Tank, 4000 liters capacity, 4 compartments, equipped with one Neptune 3"x2½" Special Auto-Stop Red Seal Compact Meter, calibrated in liters, 2 lengths Maltese Cross Hewprene Tank Truck Hose 2½"x11', Fruehauf Trailer Connection, and Handy Governor

Ford V-8 COE Tank Truck, 95-HP, 134" Wheelbase, with closed Cab, Auxiliary Rear Springs, 7.50x20 8-ply Tires, Dual Rears, 7" Rims, one Spare Wheel, Motor No. 99-TF-148623, complete with Heil Elliptical Tank, 4000 liters capacity, 4 compartments, equipped with one Neptune 3"x2½" Special Auto-Stop Red Seal Compact Meter, calibrated in liters, 2 lengths Maltese Cross Hewprene Tank Truck Hose 2½"x11', and Handy Governor

International Tank Truck, Model DS-30, R-232, 155" Wheelbase, Standard Cab with Safety Glass, 6.50x20 front tires, 7.50x20 dual rears. Chassis No. DS-30-10260-R, Motor No. HD-232-93923, complete with Davis 4000-liter, 4-compartment steel tank equipped with Neptune 3"x2½" Auto-Stop Red Seal Compact Meter, Type L-1a #5824657, with Model 342 Direct Reading Auto-Stop Register

International Tank Truck, Model DS-30, R-232, 155" Wheelbase, Standard Cab with Safety Glass, 6.50x20 front tires, 7.50x20 dual rears, Chassis No. DS-30-10259-R, Motor No. HD-232-95263, complete with Davis 4000-liter, 4-compartment steel tank equipped with 2½" TL-150-Q Smith Meter, FR-150 Eliminator 3 Vent Tubes complete, 2 11'x2½" Maltese Cross Synthetic Tank Truck Hose, Rubber Tank Mountings, 1½", 2½", 3" Barret Speed Couplers Type 3, and Fruehauf Fl 26-F Hook Type Trailer Connections complete

Ford V-8 Package Truck, 85-HP, Model 018T-1940, 158" Wheelbase, with Steel Cab and Body, Mounting 7 7.00x20 Tires, Motor No. BB18F-5598708

Chevrolet Commercial Truck, Model 1941, Series "AK", 115" Wheelbase, with Carryall Suburban Body, equipped as per factory specifications, Factory No. 2AK01-6614,

S/K #8219 with 5 6.00x16 6-ply BSW Tires and Tools, Engine No. ADR-497214 $

Ford Aviation Gas Tank Truck, Motor No. 99-TF-232783
Ford Package Truck, Model 1940, Motor No. 99-TF-185993
Ford Package Truck, Model 1940, Motor No. 99-TF-195467
Ford Package Truck, Model 1940, Motor No. 99-TF-185979

[fol. 63] (2) Floating Equipment

Launch "Gamecock II"—Steel Hull, 59'6" long x 13'6" beam x 7' deep, Draft 5'6", Registered Tonnage 21.35, Speed 10 Knots, equipped with Fairbanks-Morse Marine Diesel Engine 150-HP, No. 740640, complete with one 1000-gallon capacity S.O. Typhoon Pump and 3-blade Bronze Towing Type Propeller 50" diam., 30" pitch; and Underwriter's Centrifugal Fire Pump, 3-stage, 500-GPM, No. 42-STG R H, direct-connected to a Continental Gasoline Engine, Model H-22120-D, 4-cycle, with Starter and Generator

Lighter "Ohio"—Steel Hull, 90' long x 20' beam x 8' deep, 70000 gals. capacity, with vapor-proof hatches and seats, equipped with Worthington Horizontal Duplex Steam Pump 10" x 10¼" x 12"

Lighter "Kansas"—Steel Hull, 90' long x 20' beam x 8' deep, 70000 gals. capacity, with vapor-proof hatches and seats, equipped with Worthington Horizontal Duplex Steam Pump 10" x 10¼" x 12"

Bulk Lighter "Illinois"—Steel Hull, 95' long x 21' beam x 8'3" deep, 75000 gals. capacity, equipped with Worthington Horizontal Duplex Steam Pump 10" x 10¼" x 12"

Bulk Lighter "Indiana"—Steel Hull, 95' long x 21' beam x 8'3" deep, 75000 gals. capacity, equipped with Worthington Horizontal Duplex Steam Pump 10" x 10¼" x 12"

Bulk Lighter "Sumpter"—Steel Hull, 64' long x 21' beam x 6'6" deep, 28000 gals. capacity, equipped with Lister Diesel Engine 16-HP, Type CE, Serial No. 383391; Viking Rotary Pump, Model BM 4", Serial No. 22422138; and Deming Centrifugal Pump 1", Fig. 4000, Serial No. DC19791

Bulk Lighter "Georgia"—Steel Hull, 74' long x 21' beam x 7'6" deep, 56000 gals. capacity, equipped with Ruston Diesel Engine 10-HP; Viking Rotary Pump 3"; and Grandberg Meter, C. I., Type E, 2"

(3) TANK CARS

Equipment No.	Capacity
RP-1	6200 gallons
RP-2	" "
RP-3	" "
RP-4	" "
F-20	" "
F-21	6330 "
F-22	" "

[fol. 64] EXHIBIT E TO PETITION

Letter of Requisition Referred to in Paragraph 9 of the Petition

Headqu: rters

United States Army Forces in the Far East

Office of the Commanding General

Manila, P. I.

December 25, 1941.

Asiatic Petroleum Co., Manila, P. I., Tidewater Associated, Manila, P. I., Caltex Corp., Manila, P. I., Standard-Vacuum Oil Co., Manila, P. I.

DEAR SIRS:

Effective immediately all petroleum stocks, storage and handling facilities, etc., at your Manila, Pandacan oil depots are requisitioned by the U. S. Army. Any action deemed necessary for the destruction of this property will be handled by the U. S. Army. However, your personnel must remain on duty under the direction of the U. S. Army and obey any instructions given them by the U. S. Army.

Your full and active assistance and cooperation are requested.

By Command of General MacArthur, Hugh J. Casey, Colonel, C. E., Engineers.

[fol. 65] EXHIBIT F TO PETITION

Gasoline Tanks Referred to in Paragraph 50 of the Petition

Storage Tank No. 1, 20′ x 20′, steel riveted, with self-supported cone roof, 45,000 gals. capacity.

Storage Tank No. 2, 93′ x 35′, steel riveted, with self-supported cone roof, 1,750,000 gals. capacity.

Storage Tank No. 3, 80′ x 30′ steel riveted, with self-supported cone roof, 1,100,000 gals. capacity.

Storage Tank No. 4, 20′ x 20′ steel riveted, with self-supported cone roof, 45,000 gals. capacity.

Storage Tank No. 5, 115′ x 45′, steel riveted, with Wiggins pontoon floating roof, 3,270,000 gals. capacity.

Storage Tank No. 7, 20′ x 20′, steel riveted, with self-supported cone roof, 45,000 gals. capacity.

Storage Tank No. 8, 20′ x 20′, steel riveted, with self-supported cone roof, 45,000 gals. capacity.

Storage Tank No. 9, 78′ x 47′, steel welded with 6′ gasometer type roof and special vacuum and pressure relief fittings, special gauging device etc. 1,666,000 gals. capacity.

Storage Tank No. 10, 48′ x 36′ steel welded, 460,000 gals. capacity.

[fol. 66] EXHIBIT G TO PETITION

Petroleum Products, Supplies, Buildings and Equipment Referred to in Paragraph 65 of the Petition

Pump House.
Filling House and Garage.
Residence.
Warehouse.
Toilet and Bath House.
Fence and Gates.
Steel Tank and Foundation, capacity 2,500,000 gallons.
Steel Tank and Foundation, capacity 540,000 gallons.
Tank and Foundation, capacity 9,247 gallons.
Hose.
Pipelines.
Engine, Lister Full Diesel 6 H. P.
Engine, fire, Phomene.
2 Pumps Viking Rotary.
Fairbanks Scale.

3 Howe Scales.
Generator.
Electric Yard Lights.
Gasoline Pump and Underground Gasoline Tank,
Steel Cable, Slings, Ropes, Paints.
15 Fire Extinguishers.
391—55 gallon Drums.
418,676 liters of Motor Gasoline.
41 Drums (55 gal.) Motor Gasoline.
60 Drums (55 gal.) Diesel Oil.
1613.54 m. t. Diesel Oil.

[fols. 67-68] EXHIBIT H TO PETITION

Petroleum Products, Supplies, Buildings and Equipment Referred to in Paragraph 149 of the Petition

3 Warehouses with reinforced concrete foundation, wooden frame, galvanized iron roof.
Reconditioning Shed.
5 Storage Sheds, Wooden Frame, Galvanized Iron Roof.
Residence, 2-story Wooden Building.
Garage.
Bath House.
2 Jetties, concrete piles, hardwood platform.
Gasoline Tank, capacity 8,300 units.
Pipelines.
Metallic Hose.
Pump Blackmer Rotary.
2 Phomene Fire Engines.
Howe Platform Scale.
Welding Outfit.
Yard Lights.
2 Gravity Conveyors.
General Storehouse Supplies.
Service Station Equipment.
Miscellaneous Materials, tools and small equipment.
3,742 Empty Drums (55 gal.)
Gargoyle, Mobiloil Oils and Aviation Oils, 17,181.54 gallons.
Other High Grade Motor and Aviation Oils, 2,596.7 gallons.
All Other High Grade Gargoyle Oils, 14,933.7 gallons.
Intermediate Oils, 11,378.3 gallons.

Ordinary Oils, 79,292.47 gallons.
Non-lubricating Oils, 1,791.09 gallons.
Grease, Asphalt and Miscellaneous Supplies.

[fol. 69] On June 1, 1948, on motion made therefor, and allowed by the court, the defendant's motion to dismiss claims in the Amended Petition was allowed to stand to the Second Amended Petition.

DEFENDANT'S MOTION TO DISMISS CLAIMS FIFTH, SEVENTH AND FIFTEENTH OF AMENDED PETITION

Now comes the defendant, by its Assistant Attorney General, and moves the Court that it dismiss (a) the fifth claim, stated in paragraphs 49 to 54, inclusive, of the Amended petition (R. 14-15), (b) that part of the seventh claim which is stated in paragraphs 64 to 67, inclusive, of the amended petition (R. 17-18), and (c) the fifteenth claim, stated in paragraphs 148 to 153, inclusive, of the amended petition (R. 32-4). As basis for such motion, defendant states that it appears on the face of the amended petition that the claims so sued on accrued more than six years prior to the filing of the amended petition, that they are therefore barred under the provisions of Section 156 of the Judicial [fol. 70] Code (28 U. S. C. 262), and that this Court is without jurisdiction to consider them.

Respectfully submitted.

H. G. Morison, Assistant Attorney General.

Kendall M. Barnes, Attorney for Defendant.

ARGUMENT AND SUBMISSION OF CASE ON DEFENDANT'S MOTION TO DISMISS CERTAIN CLAIMS

On June 1, 1948, the case was argued and submitted on defendant's motion to dismiss certain claims in the Second Amended Petition by Mr. Kendall M. Barnes for defendant and by Mr. Albert R. Connelly for plaintiff.

[fol. 71] OPINION OF THE COURT ON DEFENDANT'S MOTION TO DISMISS CLAIMS FIFTH, SEVENTH, AND FIFTEENTH OF AMENDED PETITION BY HOWELL, J. DISSENTING OPINION BY JONES, CHIEF JUDGE—Filed November 1, 1948.

Mr. Albert R. Connelly for the plaintiff. Messrs Cravath, Swaine & Moore were on the brief.

Mr. Kendall M. Barnes, with whom was Mr. Assistant Attorney General H. G. Morison, for the defendant.

DEFENDANT'S MOTION TO DISMISS CLAIMS FIFTH, SEVENTH, AND FIFTEENTH OF AMENDED PETITION

HOWELL, *Judge*, delivered the opinion of the Court:

This is a motion to dismiss three of fifteen causes of action stated in plaintiff's petition on the ground that they are barred by the statute of limitations.

The defendant has requested the Court to dismiss (a) the fifth claim stated in the amended petition, (b) that part of the seventh claim stated in paragraphs 64 to 67 of the amended petition, and (c) the fifteenth claim stated in the amended petition, or in the alternative, so much of the fifteenth claim as relates to the alleged requisition by defendant of petroleum supplies, and as ground therefor invokes the six-year period limitation provisions of Section 156 of the Judicial Code (28 U. S. C. § 262).

By leave granted subsequent to the filing of the amended petition, plaintiff on March 24, 1948, duly filed a second amended petition, in which plaintiff amended its fifth claim by changing the alleged date of requisition from April 1, 1941 to April 1, 1942. From that amendment it appears [fol. 72] that the claim did not accrue more than six years prior to the filing of the petition and as a consequence the claim cannot be barred by the provisions of Section 156 of the Judicial Code, *supra*.

Therefore, it is necessary to address our attention only to the argument of defendant that parts of the seventh and fifteenth claims appearing in the amended petition are barred by the statute of limitations, and to plaintiff's contention that defendant's motion to dismiss these claims should be denied.

The claims involved are for certain properties of the plaintiff, Standard-Vacuum Oil Company, requisitioned by

the United States Government for military purposes, including petroleum stocks, supplies, buildings and equipment, and the destruction of certain supplies and equipment of plaintiff to prevent their falling into enemy hands, located at San Fernando, La Union, and La Paz, Iloilo City, Philippine Islands. Plaintiff alleges that because of the loss and destruction of its records proper claims could not be filed until the Japanese occupation had ended and opportunity had to reconstruct statistically the properties, stocks, equipment, etc., owned by it at the time of requisitioning or destruction.

The question involved is whether the statute of limitations is suspended by reason of the fact that the plaintiff was unable to make complete and timely claims against the United States by reason of the occupation of the Philippine Islands by the military forces of the Japanese with whom the United States was at war.

The relative parts of Section 156, *supra*, are as follows:

> Every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court * * * within six years after the claim first accrues. The claims of married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court * * * within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively.

[fol. 73] It is urged that even though the statute sets forth with particularity those causes which will suspend its running, that nevertheless there are other causes not mentioned in the statute itself which have the same effect.

The Supreme Court, in the case of *Braun* v. *Sauerwein*, 10 Wall. 218 (U. S. 1871), by unanimous opinion delivered by Mr. Justice Strong, made an extended exposition of the theory (pp. 221-23).

In the case of *Hopkirk* v. *Bell*, 3 Cranch 454, the Supreme Court held that the treaty of peace of 1783, by which the independence of the United States was acknowledged by

Great Britain, prevented the operation of a Virginia statute of limitations upon debts due to British subjects, and contracted before the treaty was made. In that case, though the statute had begun to run before the commencement of the war in 1775, the time during which it had thus run was not allowed to be added to any time subsequent to the treaty.

In *Hanger* v. *Abbott*, 6 Wall. 532, it was ruled that the time during which the courts of the Southern states were closed to the citizens of other states during the War Between the States was, in suits brought by such citizens, to be excluded from the computation of the time fixed by the statutes of limitation, within which only suits might be brought, and this, though the statutes contained no such exception. In other words, it was held that the statute of limitations of the Southern states was suspended while the courts in those states were closed by the war.

In the *Hanger* case, *supra*, Abbott of New Hampshire sued Hanger of Arkansas in *assumpsit*. The question was whether the period of the War Between the States was to be excluded in computing the time fixed for limitation of action by the Arkansas statute, there being no exception or exemption stated in the statute. Mr. Justice Clifford gave the opinion of the Court and held that the statute of limitations did not run while the creditor was incapable of suing, owing to the state of war.

The plaintiff, in its supplemental memorandum in answer to defendant's motion to dismiss, has directed the attention of the Court to the recent opinion of the United States Circuit Court of Appeals for the Second Circuit in *Osbourne* v. *United States, et al.*, 164 F. (2d) 767 (1947).

[fol. 74] In that case, the appellant, the libellant in the court below, had been employed between October 15, 1941, and December 8, 1941, as member of the crew of a vessel owned, operated and controlled by respondents American President Lines, Ltd., and the United States, through its agency the War Shipping Administration. At some time during the period of his employment, appellant was injured through the negligence of respondents. On December 8, 1941, he, along with the rest of the crew, was interned by members of the armed forces of the Imperial Japanese Government and was not returned to this country until October of 1945. Suit was commenced on July 31, 1946.

The District Court dismissed the libel on exceptions founded on the statute of limitations. On appeal to the

Second Circuit Court of Appeals, the order of the District Court was reversed on the ground that the running of the statute of limitations was tolled when the libellant-appellant was a prisoner in the hands of the enemy in time of war.

It is to be noted that in all of the authorities reviewed above, the courts in each instance were unavailable to the plaintiffs in question. In *Hopkirk* v. *Bell*, the Revolutionary War had the practical effect of closing the courts of Great Britain to litigants of the United States of America, and vice versa. *Hanger* v. *Abbott* involved a consideration of the War Between the States, which also had the effect of closing the courts of the North to the citizens of the South, and vice versa.

The decision of the Supreme Court of the United States in the case of *Braun* v. *Sauerwein, supra,* was primarily based upon the previous holdings of the court in the cases above mentioned.

In the most recent case, and that last reviewed above, i.e., *Osbourne* v. *United States,* the libellant in the lower court had been deprived of the proper forum in which to bring his cause of action by reason of the fact that he was a prisoner of war in a country then occupied by the enemy of the United States. Consequently, he could not have presented his cause of action during the time when he was so incarcerated.

However, in the case before us, the courts of the United States were open at all times to the plaintiff to present its [fol. 75] claims against the Government. The plaintiff knew that its stores and supplies had either been requisitioned by the United States Government or destroyed in order to prevent them from falling into the hands of the enemy many months ago.

As a matter of fact, on May 3, 1946, the plaintiff filed with the United States Army Claims Service, Manila, Philippine Islands, proof of certain claims in respect of property sold and delivered to the defendant. At that time, which was over a year and one half prior to the six-year limitation, it would have been possible for the plaintiff to have filed with this Court proper claims which, even though they may not have been complete and accurate, could nevertheless have been amended as soon as the full facts concerning them came into possession of the plaintiff.

The claims could have thus been preserved against the running of the statute of limitations.

The language of section 156 of the Judicial Code, *supra*, is clear and unambiguous:

> Every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court * * *

After the enumerated disabilities are stated, the section concludes

> * * * but no other disability than those enumerated shall prevent any claim from being barred, * * *

In view of this language employed by Congress, and the circumstances of this case, we do not think that the running of the statute should be tolled as to the claims of the plaintiff against which the motion to dismiss has been directed.

Therefore, that part of the seventh claim stated in paragraphs 64 to 67 of the amended petition, and so much of the fifteenth claim as related to the alleged requisition by the defendant of petroleum supplies, are hereby dismissed.

It is so ordered.

Madden, Judge; Whitaker, Judge; and Littleton, Judge, concur.

[fol. 76] JONES, *Chief Judge*, dissenting:

In the circumstances as disclosed by the pleadings and in the light of conditions that were known to prevail I would overrule the motion to dismiss.

Not only did wartime conditions prevail, but for nearly four years the entire territory where these transactions occurred was occupied by an alien enemy. The plaintiff was the owner of numerous oil installations throughout the Philippine Islands. It was manifestly impossible to ascertain the facts in detail during that period.

The information upon which a petition could be based, even if not destroyed by the enemy, was removed from plaintiff's use as effectively as if it had been destroyed. It is a source of pride to Americans that the courts of our country make every reasonable effort to protect the rights of litigants.

Statutes of limitation are intended to bring disputes to an issue while information, records and living witnesses are available. But here the shoe is on the other foot. Every

reason upon which statutes of limitation are based is on the other side and calls for a suspension of the statutes during a period when there was a blackout of information and facts. *Hanger* v. *Abbott*, 6 Wall. 532; *Braun* v. *Sauerwein*, 10 Wall. 218; *Osbourne* v. *United States*, 164 F. (2d) 767, 769.

It is true that the six years statute of limitation is jurisdictional, but the same reasoning applies to its suspension as to the right to recover in ordinary cases.

I would overrule the motion without prejudice and allow the facts to be presented. If these show a lack of diligence on the part of plaintiff, appropriate action can then be taken. But to grant the motion on the cold lettering of the law without knowing what the justifying facts may be is too much like making plaintiff responsible for conditions brought about by a conflict that was not of its choosing, and penalizing it for a failure to secure facts during a period when they were unavailable.

[fols. 77-78] JUDGMENT OF THE COURT—November 1, 1948

The Court decides that certain claims in the plaintiff's second amended petition be dismissed.

It Is Therefore Adjudged and Ordered, that part of the seventh claim stated in paragraphs 64 to 67 of the amended petition, and so much of the fifteenth claim as related to the alleged requisition by the defendant of petroleum supplies, are hereby dismissed.

[fol. 79] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 80] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 28, 1949

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ. The case is transferred to the summary docket.

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1948~~ 1949

No. ~~[illegible]~~ 18

STANDARD-VACUUM OIL COMPANY,
Petitioner,

against

THE UNITED STATES,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES AND BRIEF IN SUPPORT THEREOF.

ALBERT R. CONNELLY,
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15 Broad Street,
New York, N. Y.

GEORGE S. COLLINS,
ALLEN F. MAULSBY,
Of Counsel.

January 28, 1949.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 532

STANDARD-VACUUM OIL COMPANY,

Petitioner,

against

THE UNITED STATES,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, above named, respectfully prays for a writ of certiorari to the Court of Claims of the United States to review a judgment of that Court (R. 64), entered on November 1, 1948, dismissing, as being barred by the statute of limitations, that part of the Seventh Claim stated in paragraphs 64 to 67 of petitioner's second amended petition (R. 15) and so much of the Fifteenth Claim thereof (R. 27-28) as related to the alleged requisition by respondent of petitioner's petroleum supplies. A certified transcript of the record in this case is furnished herewith in accordance with Rule 41 of the Rules of this Court.

Statement

This case presents the question whether the running of the statute of limitations, applicable to a claim against the United States cognizable by the Court of Claims in respect of compensation for property taken by the United States for military purposes in time of war, is suspended during the period of enemy occupation of the situs of the property by reason of which the claimant was deprived completely of access to information bearing on the existence of the claim.

Petitioner Standard-Vacuum Oil Company, a Delaware corporation, was at the time of the Japanese invasion of the Philippine Islands in December, 1941, the owner of numerous oil installations located throughout the Philippine Islands. After the declaration of war by the United States upon the Japanese Empire on December 8, 1941, the United States Armed Forces of the Far East (USAFFE) requisitioned for military purposes certain of these installations owned by petitioner, including the petroleum stocks, supplies, buildings and equipment that made up the same. Among the installations so requisitioned were those located at San Fernando, La Union, Philippine Islands, and at La Paz, Iloilo City, Philippine Islands, to which specific reference is made in the Seventh and Fifteenth Claims of petitioner's second amended petition to the Court of Claims.[1] A part of the petroleum stocks, supplies and equipment on hand at the requisitioned installations was used or removed by USAFFE, but as the Japanese forces advanced, USAFFE destroyed the remaining properties.

What occurred thereafter is now history. The USAFFE

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[1] The factual statements made herein are based upon petitioner's second amended petition (R. 1-58) filed June 1, 1948, and verified by affidavit of E. T. Singer, Vice-President of petitioner Standard-Vacuum Oil Company (R. 29).

forces operating under General Douglas MacArthur were driven back and cornered in Bataan Peninsula and Corregidor, and by May of 1942, the Japanese were for all practical purposes in complete control of the Islands, with resistance being maintained only by isolated guerrilla units.

In February of 1945, General MacArthur returned, and the Islands were thereafter liberated. Japan surrendered unconditionally in September of that year, but even at that time there were still pockets of Japanese resistance throughout the Islands. Then followed a period of many months of military occupation, with considerable civil turmoil being also present as a natural aftermath of the conflict.

Prior to the requisition and destruction of its San Fernando and La Paz installations by USAFFE personnel, petitioner had complete and accurate records of all that it owned and possessed at these locations. However, as an expectable concomitant of war all local records and files, along with the various Army requisition documents and agreements between petitioner and USAFFE for the sale and delivery of certain petroleum supplies, equipment and property to USAFFE, were either destroyed, lost or taken by the invading forces, and for that reason it became impossible at that time for petitioner to ascertain the existence of its claim against the United States or the extent thereof. Indeed, for several months prior to mid-December, 1941, communications between petitioner's staff in the Philippines and its home office were greatly curtailed, and shortly thereafter even such limited communications were shut off.

Furthermore, as was pointed out to the court below, the only persons who would have known of the requisition by USAFFE of petitioner's properties, and who would have been sufficiently informed as to the extent of this requisition in the absence of documentary material in respect thereof, were employees of petitioner working at its San Fernando

and La Paz installations. These men, by virtue of their connection with the installations, would have been in a position to speak with reasonable accuracy in connection with the properties and stocks on hand when USAFFE took control of, and ultimately destroyed, the premises. And fortified with the information possessed by these men, petitioner could have presented seasonably its petition to the Court of Claims. Unfortunately, these employees were either killed by the invading forces or placed in concentration camps for the period of the Japanese occupation of the Philippine Islands, facts which will, of course, be developed fully on the trial of this case, but facts which this Court is now urged to notice judicially in light of the general knowledge surrounding Japanese methods of incarcerating, or otherwise disposing of, civilians remaining in the Islands after the Japanese invasion.

Hostilities were terminated in 1945, but many months passed before the chaos and confusion of the war and its aftermath began to subside. When, during 1946, petitioner was permitted to send a skeleton staff to the Philippines, that staff faced the tremendous task not only of physically reconstructing its installations in order to supply, in the first instance, the American occupation forces and essential civilian needs, but also of ascertaining all the facts bearing on the loss of its pre-war properties. Little by little the facts were pieced together, but the process of investigation has continued even to the present date.

Petitioner recognized that in the normal course of events claims against the United States had to be prosecuted within the six-year period established under Section 156 of the Judicial Code. In order to avoid any question as to the bar of this statute, petitioner filed its original petition with the Court of Claims on December 5, 1947, stating therein as completely as was then possible its overall claim

against the United States for properties in the Philippine Islands requisitioned during the war. However, even that information as set forth in the petition was not satisfactory to respondent, for on December 26, 1947, it filed a motion for an order requiring petitioner to make its petition more definite and certain in numerous respects. During the time allowed petitioner within which to determine whether to make objection to respondent's motion, additional information in respect of other installations and supplies requisitioned by the United States was uncovered, and as a consequence a stipulation was filed whereby petitioner consented to the granting of respondent's motion and agreed to file an amended petition on or before March 22, 1948. On March 22, 1948, petitioner moved before the Court of Claims for leave to file its amended petition, and on March 24, 1948, this motion was granted and the amended petition filed.

The amended petition changed petitioner's demand for compensation in respect of its San Fernando installation from one for a small quantity of gasoline of a value of $559.64 to one embracing all petroleum products, supplies, buildings and equipment at that location. The amended petition also added a new demand for compensation, based on the USAFFE requisition of petitioner's petroleum products, supplies, buildings and equipment located at La Paz. Respondent filed its motion to dismiss this amended petition both in respect of the additional compensation sought for USAFFE requisition at San Fernando and in respect of the demand for compensation based on the requisition of petroleum products at La Paz, the motion to dismiss being based upon a strict application of the six-year statute of limitations. After petitioner had obtained leave from the Court of Claims to file a second amended petition, for the sole purpose of correcting certain typographical errors appearing in its amended petition, respondent's motion to dismiss was

allowed to stand against the second amended petition and, after argument thereon, was granted by a divided court.

In holding the statute of limitations to be a good defense to petitioner's demand for compensation in respect of its San Fernando and La Paz installations, the Court of Claims decided that (R. 63):

> "In view of this language employed by Congress, and the circumstances of this case, * * * the running of the statute should [not] be tolled as to the claims of the plaintiff against which the motion to dismiss has been directed."

Chief Judge Jones dissented from the opinion of the Court, and in an opinion rejecting the conclusions reached by the majority, he wrote as follows (R. 63):

> "In the circumstances as disclosed by the pleadings and in the light of conditions that were known to prevail I would overrule the motion to dismiss.
>
> * * * * * * *
>
> "Statutes of limitation are intended to bring disputes to an issue while information, records and living witnesses are available. But here the shoe is on the other foot. Every reason upon which statutes of limitation are based is on the other side and calls for a suspension of the statutes during a period when there was a blackout of information and facts. *Hanger* v. *Abbott*, 6 Wall. 532; *Braun* v. *Sauerwein*, 10 Wall. 218; *Osbourne* v. *United States*, 164 F. (2d) 767, 769."

Statute Involved [2]

In dismissing parts of the Seventh and Fifteenth Claims stated in petitioner's second amended petition, the Court

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[2] After the argument and submission on June 1, 1948, of respondent's motion to dismiss, Section 156 of the Judicial Code was amended and consolidated with Sections 250(2) and 250a thereof to form Title 28, United States Code, Section 2501.

of Claims of the United States invoked the six year limitation-of-action provisions of Section 156 of the Judicial Code (28 U. S. C. § 262). The relevant parts of that Section are as follows:

> "Every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court * * * within six years after the claim first accrues. The claims of married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court * * * within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively."

Jurisdiction to Review

Jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1255(1), 1651(a) and 2101(c). The judgment of the Court of Claims of the United States was entered on November 1, 1948 (R. 64).

The Question Presented

Whether the running of the statute of limitations, applicable to a claim against the United States cognizable by the Court of Claims in respect of compensation for property taken by the United States for military purposes in time of war, is suspended during the period of enemy occupation of the situs of the property by reason of which the claimant was deprived completely of access to information bearing on the existence of the claim.

Reason Relied On for Allowance of the Writ

In holding the six year limitation-of-action provisions of Section 156 of the Judicial Code applicable under the circumstances presented by this record, the Court of Claims of the United States decided an important question of federal law which has not been, but should be, settled by this Court.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the Court of Claims of the United States, sitting at Washington, D. C., commanding said Court of Claims to certify and send up to this Court, on a date to be designated, a full and complete transcript of the record of all proceedings in said Court of Claims heretofore had in this case, to the end that this case may be reviewed and determined by this Court; that the judgment of said Court of Claims be reversed; and that your petitioner be granted such other and further relief as may seem proper.

STANDARD-VACUUM OIL COMPANY,
Petitioner,

By ALBERT R. CONNELLY,
Counsel for Petitioner,
15 Broad Street,
New York, N. Y.

GEORGE S. COLLINS,
ALLEN F. MAULSBY,
Of Counsel.

January 28, 1949.

BRIEF IN SUPPORT OF PETITION

Opinion of the Court Below

The opinion of the Court of Claims of the United States, handed down on November 1, 1948 (R. 59-63), has not yet been reported in Federal Supplement.

ARGUMENT

The running of the Statute of Limitations was suspended during the period of war and enemy occupation.

Although the majority opinion of the Court of Claims has taken the view that the language of the applicable statute of limitation, together with the circumstances of the case, precludes an assertion of petitioner's claim for property requisitioned at its San Fernando and La Paz installations, nevertheless, the Court indicates a complete awareness (R. 60-61) of the now-established principle that causes other than those set forth with particularity in the statute itself will have the effect of suspending the running of the statute. This principle was given an extended exposition by this Court in the early case of *Braun* v. *Sauerwein*, 10 Wall. 218 (U. S. 1871), in which a Maryland statute of limitation was pleaded as against a claim for money alleged to have been illegally exacted by the Collector of Internal Revenue. Mr. Justice Strong, writing for a unanimous Court, discussed at length certain judicial exceptions to the prescribed period of limitation and concluded (p. 223):

> "It seems, therefore, to be established, that the running of a statute of limitation may be suspended by causes not mentioned in the statute itself. • • •"

Perhaps the important authoritative case in this country upon the subject is *Hanger* v. *Abbott*, 6 Wall. 532 (U. S.

1867), to which reference was made by this Court in the *Braun* case and which held squarely that a state of war had the effect of suspending the running of the statute.

In the *Hanger* case, Abbott of New Hampshire sued Hanger of Arkansas in *assumpsit*. The question was whether the period of the War between the States was to be excluded in computing the time fixed for limitation of action by the Arkansas statute, there being no exception or exemption stated in the statute. Mr. Justice Clifford gave the opinion of the Court and held that the statute of limitations did not run while the creditor was incapable of suing, owing to the state of war.

Subsequent decisions, both state and federal, have with rare exception been in accord with this doctrine,[3] nor is it difficult to account for this unanimity of opinion. The courts of the United States are sensitive to the rights of litigants and sedulous in their protection. Accordingly, when the vicissitudes of war impose disabilities for which a litigant is in no way responsible, courts proceed upon the principle that the period of that disability, even though not specifically provided for in the statute, must be deducted in computing the time within which suit is allowed to be commenced.

It is fair to point out that a number of the cases holding that war suspends the running of the statute were actions between citizens of the belligerent nations, the opinion in

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[3] *The Protector*, 9 Wall. 687 (U. S. 1869); *Brown* v. *Hiatts*, 15 Wall. 177 (U. S. 1873); *First Nat. Bank* v. *Anglo-Oesterreichische Bank*, 37 F. (2d) 564 (C. C. A. 3d, 1930); *Maryland Casualty Co.* v. *Vidigoj*, 270 S. W. 472 (Ky. 1925) (recognizing the general rule and pointing out that a specific statute to the same effect was controlling); *Wirtele* v. *Grand Lodge, A. O. U. W.*, 196 N. W. 510 (Neb. 1923) (as applied to a United States citizen resident in a belligerent nation during the first World War); *Farenholtz* v. *Meinshausen*, 168 N. Y. Supp. 869 (1st Dep't, 1918). See *Sands* v. *N. Y. L. Ins. Co.*, 50 N. Y. 626 (1872) (wherein the court by way of dictum stated that war extends the statute of limitations). *Cf.* RESTATEMENT, PROPERTY, § 221(1)(d).

those cases going off on the theory that the courts of either belligerent nation were necessarily closed to the citizens of the other. *Cf. Hanger* v. *Abbott*, 6 Wall. 532 (U. S. 1868); *Brown* v. *Hiatts*, 15 Wall. 177 (U. S. 1873).[4] Yet in applying this principle to the War between the States, the reported cases have also held the statute suspended in actions between citizens of different states of the Confederate States, *i.e.*, between citizens of the same belligerent. *Adger* v. *Alston*, 15 Wall. 555 (U. S. 1873); *Batesville Institute* v. *Kauffman*, 18 Wall. 151 (U. S. 1873); *Ross* v. *Jones*, 22 Wall. 576 (U. S. 1875). However, only infrequently have courts in this country been called upon to decide whether the running of the statute is suspended as between the United States and a non-belligerent by virtue of the occupation of the non-belligerent nation by the military forces of a nation with whom the United States was at war, although if such be true, then *a fortiori* the running of the statute would be suspended as between the United States and its own citizens in respect of the occupation and control by the belligerent over the property owned by the United States citizen.

Some cases have held either directly or by implication that an occupation by a belligerent nation of the property of a non-belligerent has the effect of tolling the statute. *Steaua Romana Societate, etc.* v. *Woodman*, 2 F. Supp. 303 (E. D. Pa. 1931), *rev'd on stip. of parties*, 61 F. (2d) 1047 (C. C. A. 3d, 1932); *Wirtele* v. *Grand Lodge A. O. U. W.*, 196 N. W. 510 (Neb. 1923); *Colorado Fuel & Iron Co.* v. *Industrial Commission*, 216 Pac. 706 (Colo. 1923). See Colombos, *Law of Prize*, § 44. However, it was because

[4] With the exception of Louisiana, the rule of law presently under discussion, suspending during war the operation of a limitation-of-action statute, was recognized and applied to the War between the States, and in consequence thereof statutes of limitation were suspended as between citizens of the Confederate States and citizens of those states which remained loyal to the Union.

of the doubt surrounding this question that the Acting Secretary of State wrote, in answer to an inquiry of the Belgin Minister made during the First World War, that the question whether, although the Government of the United States was not at war with Belgium, the statute of limitations in the United States would be suspended, in view of the occupation of Belgium by German military forces, was "one which, in the absence of special legislation on the subject or an agreement on the part of the Governments concerned, can finally be determined only by the decision of a competent judicial tribunal". See MS. Department of State, file 855.51/33, the Acting Secretary of State (Polk) to the Belgian Minister (De Cartier), no. 84, July 20, 1918. Yet in spite of the relative darkness in this corner of our case law, we submit that the state of war existing between the United States and the Japanese Empire, together with the Japanese occupation of the Philippine Islands from December, 1941, to February, 1945, had the effect of suspending the running of the statute of limitations upon petitioner's claim against the United States for property taken from it and used or destroyed by the United States Armed Forces of the Far East. Upon the principle decided in the earlier cases and adhered to in subsequent decisions—that the statute of limitations can not run when a state of war prevents the doing of the acts necessary to prevent its running—this contention seems eminently justified.

The most recent case dealing with this principle is *Osbourne* v. *United States*, 164 F. (2d) 767 (C. C. A. 2d, 1947). In the *Osbourne* case appellant, the libellant in the court below, had been employed between October 15, 1941, and December 8, 1941, as a member of the crew of a vessel owned, operated and controlled by respondents American President Lines, Ltd., and the United States, through its agency the War Shipping Administration. At some time

during the period of his employment appellant was injured through the negligence of respondents. On December 8, 1941, he (along with the rest of the crew) was interned by members of the armed forces of the Imperial Japanese Government and was not returned to this country until October of 1945. Suit was commenced on July 31, 1946.

The District Court dismissed the libel on exceptions founded on the statute of limitations, *Osbourne* v. *United States*, 74 F. Supp. 711 (S. D. N. Y. 1947), stating that (p. 712):

> "It is with reluctance that I have come to the above conclusion but I see no way to avoid it. Libelent was late in starting his action because he was denied access to the Courts through no fault of his.
>
> • • • • • • •
>
> "Notwithstanding all this I can find no authority in law for reviving this claim which died because of the failure to prosecute in time. I cannot put into the law something which is not there. The remedy lies with the legislature."

On appeal to what is now the United States Court of Appeals for the Second Circuit, the order of the District Court was unanimously reversed in an opinion by Judge Jerome Frank, concurred in by Judges Learned Hand and Augustus N. Hand. That Court based on its conclusion on the reasoning of this Court in the *Braun* and *Hanger* cases, discussed *supra* at pp. 9-10, and held that the running of the statute of limitations was suspended under the circumstances before it for consideration.

It is now, of course, well settled that in suits between citizens of different belligerent nations, the running of the statute is suspended during the period of hostilities. See, e.g., *Hanger* v. *Abbott*, 6 Wall. 532 (U. S. 1868); *Brown* v. *Hiatts*, 15 Wall. 177 (U. S. 1873). This rule is based on

the fact that the immediate and necessary consequence of a declaration of war is to prohibit intercourse or dealings between citizens of the belligerent states or nations; and if the running of the statute were not suspended, and if the period of war were of sufficient duration, proper claimants in the one belligerent would be denied completely the right to enforce their just claims against citizens of the other belligerent. It follows, therefore, that this rule is based upon principles of justice and fairness, and it is in accordance with these principles that the strict common-law rule has been relaxed. See *Siplyak* v. *Davis*, 119 Atl. 745 (Pa. 1923).

With this in mind, we revert to the problem with which petitioner was faced during the period of the war and the Japanese occupation of the Philippines. Since the only persons who knew the facts upon which a claim could be based were either killed or interned by the Japanese, petitioner was not aware of the existence of any claim it might have had until after the Philippines had been liberated. Therefore, during the period of occupation, petitioner was just as effectively denied access to the courts as if it had been a natural person who had been imprisoned by the Japanese. If the statute of limitations was not suspended under these circumstances, and if the war conditions had lasted long enough, the right of petitioner to just compensation for its requisitioned properties would have been barred even before any suit could have been instituted. It is entirely fortuitous that, in this case, the Japanese occupation of the Philippines lasted only approximately three and a half years, and that petitioner was able to file its original petition within the six-year period specified by the statute. We submit, however, that under the circumstances petitioner should not be bound by a strict application of the statute in respect of the additional demands set forth in its

amended petition and restated in its second amended petition.

If the statute of limitations is not suspended during the period of war and enemy occupation, another anomalous result would necessarily follow. Under the principles heretofore considered, it is possible for a Japanese citizen to assert against the Government of the United States a claim upon which the statute of limitations has run, without fear of having his claim dismissed because it was not seasonably filed. If the Government should interpose the defense of the statute of limitations, such a claimant could invoke, and rightly, the rule that the statute was tolled during the period of war between Japan and the United States. Yet under the decision of the Court of Claims, a citizen of the United States can be denied the right to reimbursement for property taken from him by the United States Army for use in the prosecution of the same war, and such denial can be upheld on the ground that the statute had run its course during a period when, because of the war, the claimant did not have, and during a period when it was impossible for him to obtain, the information upon which alone suit for such reimbursement could be based. Such would be an incredibly harsh rule for this, or any, Court to adopt, more especially since it would extend to a Japanese citizen a right which under similar circumstances would be denied a citizen of the United States. Such a rule would be particularly unconscionable where, as here, the disability to sue on the part of the United States citizen grew out of the Japanese occupation of American-owned property.

---

[5] The rule suspending the running of the statute during war is applicable irrespective of whether the limitation in the particular statute of limitations is considered to be a limitation of the right or liability, or of the remedy. *Borovitz* v. *American Hard Rubber Co.*, 287 Fed. 368 (N. D. Ohio 1923); *Colorado Fuel & Iron Co.* v. *Industrial Commission*, 216 Pac. 706 (Colo. 1923); *Siplyak* v. *Davis*, 119 Atl. 745 (Pa. 1923).

The majority opinion of the Court of Claims makes specific reference to many of the decisions discussed above but concludes that "In view of [the] language employed by Congress, and the circumstances of this case, we do not think that the running of the statute should be tolled * * *". (R. 63.) It has already been shown that the running of the statute may be suspended by causes not set forth in the statute itself. See *Braun* v. *Sauerwein, supra,* at p. 9. With reference to the "circumstances of the case," the statements made herein, and in the foregoing petition to this Court for a writ of certiorari, demonstrate all too clearly the insurmountable difficulties with which petitioner was burdened and the diligence with which petitioner acted, in spite of these difficulties, in attempting to apprise respondent of its claim for properties requisitioned in the Philippine Islands by representatives of the United States Armed Forces of the Far East during World War II.[6]

It is submitted that the dissenting opinion of Chief Judge Jones (R. 63) approaches this record with considerable judicial objectivity and that

> "* * * to grant the motion on the cold letter of the law without knowing what the justifying facts may be is too much like making plaintiff [petitioner] responsible for conditions brought about by a conflict that was not of its choosing, and penalizing it for a failure to secure facts during a period when they were unavailable."

---

[6] The majority opinion of the Court of Claims observes that petitioner filed a number of claims for property requisitioned in the Philippines by USAFFE, with the United States Army Claims Service, an organization set up for the purpose of dealing with just such claims against the United States. What the Court failed to observe in its opinion, even though the point was stressed on oral argument under questioning from the Bench, is that no claim was ever presented to the Army Claims Service in connection with the specific property considered in the Court's opinion, this for the reason that petitioner was not at that time aware of the existence of any such claim.

A similar thought, and one equally applicable to the circumstances of this case, was voiced by this Court in *Braun* v. *Sauerwein* [10 Wall. 218, 222 (U. S. 1870)] when Mr. Justice Strong said, in holding the statute of limitations suspended while the plaintiff was prevented from suing by an Act of Congress:

> "* * * none of the reasons which induced the enactment of these statutes [of limitations] apply to [this] case; * * *."

Conclusion

It is respectfully submitted that this case calls for the exercise of supervisory powers by this Court and that the writ should be allowed.

Respectfully submitted,

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January 28, 1949.

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Supreme Court of the United States

OCTOBER TERM, ~~1948~~ 1949

No. ~~532~~ 18

STANDARD-VACUUM OIL COMPANY,
Petitioner,

against

THE UNITED STATES,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES.

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GEORGE S. COLLINS,
ALLEN F. MAULSBY,
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March 21, 1949.

Supreme Court of the United States

OCTOBER TERM, 1948

No. 532

STANDARD-VACUUM OIL COMPANY,
Petitioner,

against

THE UNITED STATES,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

I

In its petition to this Court for a writ of certiorari, petitioner stated the question presented by this case to be whether the statute of limitations is suspended during the period of enemy occupation of the situs of property taken by the United States for military purposes in time of war because of the fact that during that period petitioner was *deprived completely of access to information bearing on the existence of its claim.* It was then shown in the petition (pp. 3-4) and in the supporting brief (pp. 14-16) that petitioner was in fact completely without access to information bearing on the existence of its claim against the United

States not only during the period of the Japanese occupation of the Philippine Islands from December, 1941, until sometime after February, 1945, but also for a considerable period thereafter.

The Government, in its brief in opposition to petitioner's application for a writ of certiorari, has restated the question in terms of whether the statute of limitations was tolled by reason of the fact that petitioner was unable to obtain *complete information about the property taken*. This statement of the question assumes, of course, that petitioner had at least some knowledge during the period of Japanese occupation of what had happened to its various installations throughout the Philippines.

It is submitted that such was not, and has been sufficiently demonstrated not to have been, the fact; that even the United States Government and its military representatives were, by virtue of the Japanese occupation, shut off from information which could have been used most profitably in the early liberation of the Philippines; and that respondent's rephrasing of the question presented does not state accurately the issue before this Court for consideration. The fact is that petitioner was completely without knowledge of the existence of its claim against the United States and could not have obtained such knowledge during this period of the Japanese occupation of the Philippines.

Petitioner knew, of course, that it had various installations in the Philippines at the outbreak of the war. It might have assumed, perhaps, that all such installations had been damaged to a greater or lesser extent by reason of the war and, if it had been merely a question of the amount of damage sustained, it could conceivably have followed the course suggested by the Government and the court below

and asserted a claim for an indefinite amount. But the question that confronted the petitioner was not the *amount* of liability, but the *fact* of liability. Petitioner's claim rests not upon an injury to property by reason of the Japanese war, but upon the taking by the United States military forces. In order for petitioner to be in a position to assert a claim against the United States in respect of any given installation, it had to have at least sufficient information to give rise to a reasonable belief that prior to the Japanese occupation, the United States Army had actually taken the property from petitioner. The only possible sources of such information, however, *i.e.*, the persons present at the time of the taking, were unavailable to petitioner during the period of Japanese occupation. It was, therefore, obviously impossible for it to file with the Court of Claims "proper claims which, even though they may not have been complete and accurate, could nevertheless have been amended so soon as the full facts concerning them came into possession of the plaintiff" (Resp. Br. pp. 12-13).

In line with its statement of the question presented, respondent urges as here controlling the language of this Court in *McIver* v. *Ragan*, 2 Wheat. 25, 29 (U. S. 1817), where Chief Justice Marshall wrote "The difficulties under which the plaintiffs labored respected the trial, not the institution of their suit." If petitioner had known of the existence of its claim against the United States during the period of Japanese occupation, the rationale of the quoted sentence would be compelling. However, it is hardly conceivable that a claimant can be called upon to assert against the United States a claim as to the existence of which it was completely without information or be penalized for having failed to do so.

II

Respondent argues in its brief that statutes of limitation are not tolled during time of war as to alien nationals of allied or non-belligerent countries, residing therein, even though there exist great obstacles to communication and transportation produced by war. For this proposition it cites a number of Workmen's Compensation Act cases decided in state-court litigation commenced after the First World War (Resp. Br. p. 8)*. It is submitted that none of these cases substantiates the proposition for which it is cited.

In the *Peppas* case plaintiff's decedent, a citizen of Greece, was killed in an industrial accident in this country in November, 1916. Information of the death was received by plaintiff in November, 1917, and she immediately executed and sent to this country a power of attorney authorizing enforcement of any claim for compensation that she might have. However, no claim was filed until January, 1920.

In holding the claim barred by the one year limitation-of-action provisions of the Colorado Workmen's Compensation Act the court said (p. 665):

> "* * * It is contended that the existence of the war and the blockade of Greece prevented such action and excused the failure [to file the claim promptly]. This

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Industrial Commission v. *Peppas*, 203 Pac. 664 (Colo. 1922); *Inland Steel Co.* v. *Jelenovic*, 150 N. E. 391 (Ind. App. 1926); *Sadowski* v. *Hubbard Steel Foundry Co.*, 193 N. E. 676 (Ind. App. 1935); *Gorski's Case*, 116 N. E. 811 (Mass. 1917); *Kolundjija* v. *Hanna Ore Mining Co.*, 193 N. W. 163 (Minn. 1923); *Lipmanowich* v. *Crookston Lumber Company*, 210 N. W. 47 (Minn. 1926); *Industrial Commission of Ohio* v. *Rotar*, 179 N. E. 135 (Ohio 1931); *Siplyak* v. *Davis*, 119 Atl. 745 (Pa. 1923); *Poccardi* v. *Ott*, 98 S. E. 69 (W. Va. 1919).

would be true only in so far as those facts were responsible for the failure. * * *"

Far from standing for the proposition that statutes of limitation are not tolled "despite great obstacles to communication and transportation produced by war" (Resp. Br. p. 8), the Colorado court observed in its opinion that obstacles such as the existence of war and blockade *would* excuse failure to make seasonable claim for compensation if *those facts were responsible for the failure.*

The *Kolundjija* and *Lipmanowich* cases, decided by the Supreme Court of Minnesota, were both cases in which the statutory period had commenced to run after hostilities had been terminated by the signing of the Armistice but before peace was declared by the Joint Resolution of July 2, 1921. For all practical purposes the war was over, and lines of communication and transportation between Europe and the United States had been once again established. It is pertinent to note that in holding effective the statutory bar, the Minnesota court made no mention of any "great obstacles to communication and transportation produced by war" nor did it state that the statute of limitations would not be tolled despite such obstacles. The *Gorski* and *Poccardi* decisions follow the reasoning adopted by the Minnesota court.

In the *Jelenovic* and *Sadowski* cases the Appellate Court of Indiana held, in accordance with the established rule (Pet. Br. p. 13), that the statute of limitations was tolled because of the fact that in each case plaintiff was a resident enemy alien. In neither case was there any indication that the statute might not be tolled despite the "great obstacles" emphasized by respondent. To the same effect are the *Rôtar* and *Siplyak* cases.

Respondent argues, however, that the difficulties under which petitioner operated "were certainly no more severe than those under which plaintiffs labored in the above cases" (Resp. Br. p. 8). That this statement is not true is obvious.

In December, 1941, the Japanese forces made their initial landings in the Philippines, and by May, 1942, enemy occupation of the Islands was essentialy complete. MacArthur had withdrawn, Corregidor had surrendered, and organized resistance was non-existant. It is now a matter of common knowledge that all local civilians remaining in the Islands were either interned in concentration camps or killed. All records and files that had not been destroyed before the invading forces descended were seized and removed from the possession of their owners. This, of course, was true in respect of the records and files of petitioner as well as of the records and files of other business organizations located in the Philippines. Even before the declaration of war on Japan commercial communications, by mail, cable or otherwise, had been greatly curtailed, and shortly thereafter even such limited communications were shut off.

Under such circumstances it was obviously impossible for petitioner to obtain any information as to the existence of even a possible claim it might have against the United States in respect of property taken for military purposes. Certainly the difficulty inherent in these circumstances is far removed from the difficulties considered indirectly in the cases cited by respondent.

The plain fact is that the courts were closed to petitioner during the period of the Japanese occupation just as effectively as if petitioner had been an enemy alien, a situation which even respondent admits would have tolled the statute of limitations. *Cf. Osbourne v. United States,* 164 (2d) 767 (C. C. A. 2d, 1947).

III

Respondent concedes the rule stated in *Braun* v. *Sauerwein*, 10 Wall. 218 (U. S. 1869), that "a statute of limitation may be suspended by causes not mentioned in the statute itself", but stresses the further language of this Court in the *Braun* opinion to the effect that such causes should be admitted "with great caution". It is not petitioner's position that this Court should do otherwise. However, it is petitioner's position that the circumstances here considered bring this case within the rule followed in the *Hanger*, *Braun* and *Osbourne* cases and that the running of the statute of limitations was accordingly suspended during the period of the Japanese occupation of the Philippine Islands.

Conclusion

It is respectfully submitted that this case calls for the exercise of supervisory powers by this Court and that the writ should be allowed.

Respectfully submitted,

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March 21, 1949.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. [redacted]18

STANDARD-VACUUM OIL COMPANY,
Petitioner,

against

THE UNITED STATES OF AMERICA,
Respondent.

BRIEF FOR PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

STANDARD-VACUUM OIL COMPANY, *Petitioner,* *against* THE UNITED STATES OF AMERICA, *Respondent.*	No. 532

BRIEF FOR PETITIONER

Opinion of the Court Below

The opinion of the Court of Claims of the United States, filed on November 1, 1948 (R. 59-64), is reported at 80 F. Supp. 657 and 112 Ct. Cls. 137.

Jurisdiction to Review

Jurisdiction is conferred upon this Court by Title 28, United States Code, Section 1255(1). Certiorari was granted on March 28, 1949.

Question Presented

This case involves the question whether, under the circumstances here presented, the statute of limitations is a defense to certain claims for compensation for property taken by the United States military forces in the Philippine Islands after the outbreak of World War II. More specifically, the question presented is whether the statute of

limitations, in an action against the United States cognizable by the Court of Claims, was suspended for the period during which the claimant was deprived completely of access to information bearing upon the existence of its claim because of enemy occupation of the situs of the property and the internment of persons having knowledge of the facts bearing thereon.[1] It is petitioner's position that the Court of Claims of the United States erred in holding the statute of limitations to be a defense under such circumstances.

Statute Involved

The material portions of Section 156 of the Judicial Code, 36 Stat. 1139 (1911), 28 U. S. C. § 262 (1940), on the basis of which the Court of Claims dismissed parts of the Seventh and Fifteenth Claims stated in petitioner's second amended petition, are as follows:

> "Every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court * * * within six years after the claim first accrues. The claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and per-

[1]The Government, in its brief in opposition to petitioner's application for certiorari, attempted to restate the question presented in terms of whether the statute of limitations was tolled because petitioner was unable to obtain "complete" information about the property taken. However, for a period of about four years, petitioner did not have any knowledge, complete or otherwise, of the fact that its property had been so taken. Indeed, the Government has not suggested, and it is not the fact, that petitioner had any such knowledge or information during that period.

sons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court * * * within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively."

Respondent's motion to dismiss was argued and submitted to the Court of Claims on June 1, 1948, at which time Section 156 of the Judicial Code stood as the limitation-of-action section applicable to the type of claim presented for consideration. While respondent's motion to dismiss remained pending and undecided before the Court of Claims, Section 156 of the Judicial Code was repealed by the Act of June 25, 1948 (62 Stat. 869), effective September 1, 1948, and a new statute, Title 28, United States Code, Section 2501, took its place.[2] Although the new statute does not appear to change Section 156 in any respect material here, it is believed that Section 156 is controlling, for the reason that Section 39 of the new act (62 Stat. 992) pro-

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[2]The provisions of Section 2501, in so far as applicable to such a claim as this, are as follows:

"§ 2501. *Time for filing suit*

"Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed, or the claim is referred by the Senate or House of Representatives, or by the head of an executive department within six years after such claim first accrues.

* * * * * * *

"A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases."

Section 2501 is a consolidation of former 28 U. S. C. Sections 262, 250 (2) and 250(a).

vides that "Any rights or liabilities now existing under such [repealed] sections or parts thereof shall not be affected by this repeal."

Statement of the Case

Petitioner Standard-Vacuum Oil Company, a Delaware corporation, was, at the time of the Japanese invasion of the Philippine Islands in December, 1941, the owner of numerous oil installations located throughout the Philippine Islands. After the declaration of war by the United States upon the Japanese Empire on December 8, 1941, the United States Armed Forces of the Far East (USAFFE) requisitioned for military purposes certain of those installations owned by petitioner, including the petroleum stocks, supplies, buildings and equipment that made up the same. Among the installations so requisitioned were those located at San Fernando, La Union, Philippine Islands, and at La Paz, Iloilo City, Philippine Islands, to which specific reference is made in the Seventh and Fifteenth Claims stated in petitioner's second amended petition. A part of the petroleum stocks, supplies and equipment on hand at the requisitioned installations was used or removed by USAFFE, but as the Japanese forces advanced, USAFFE destroyed the remaining properties.

What occurred thereafter is now history. The USAFFE forces operating under General MacArthur were driven back and cornered in Bataan Peninsula and Corregidor, and by May of 1942, the Japanese were for all practical purposes in complete control of the Islands, with resistance being maintained only by guerrilla units. Beginning with the initial assault of the Japanese forces the Islands, and all civilian occupants thereof, were cut

off from the United States; and after Japanese occupation had become complete, all American citizens were either interned or placed in prison camps, and many of the Filipinos took refuge in the hills where they spent the duration in guerrilla activity.

In February of 1945, General MacArthur returned, and the Islands were thereafter liberated. Japan surrendered unconditionally in September of that year, but even at that time there were still pockets of Japanese resistance throughout the Islands. Then followed a period of many months of military occupation, with considerable civil turmoil being also present as a natural aftermath of the conflict.

Prior to the requisition and destruction of its San Fernando and La Paz installations by USAFFE personnel, petitioner had complete and accurate records of all that it owned and possessed at those locations. However, as an expectable concomitant of war, all local records and files, along with the various Army requisition documents and agreements between petitioner and USAFFE for the sale and delivery of certain petroleum supplies, equipment and property to USAFFE, were either destroyed, lost or taken by the invading forces, and for that reason it became impossible at that time for petitioner to ascertain either the existence of its claim against the United States respecting such properties or the extent thereof. Indeed, for several months prior to the outbreak of war, communications between petitioner's staff in the Philippines and its home office in New York were greatly curtailed, and thereafter even such limited communications were shut off.[3]

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[3]Any communication between petitioner and its representatives and employees in the Philippines after the outbreak of war not only was impossible as a practical matter but also was forbidden by law. Trading with the Enemy Act, Sections 2 and 3, 40 Stat.

Furthermore, the only persons, outside of the military, who would have known of the requisitioning by USAFFE of petitioner's various properties, and who would have been sufficiently informed as to the extent of such requisitioning in the absence of documentary material in respect thereof, were the American and Filipino employees of petitioner working at its San Fernando and La Paz installations. Those men, by virtue of their connection with the installations, would have been in a position to speak with reasonable accuracy in connection with the properties and stocks on hand when USAFFE took control of, and ultimately destroyed, the premises. And fortified with the information possessed by those men, petitioner could have presented its petition to the Court of Claims at an earlier date. Unfortunately, the American citizens employed by petitioner were either killed by the invading forces or placed in concentration camps for the period of the Japanese occupation of the Philippine Islands, facts which will, of course, be developed fully on the trial of this case, but facts which this Court may now notice judicially in light of the general knowledge surrounding Japanese methods of in-

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411 (1917), 50 U. S. C. App. §§ 2, 3 (1944); General Ruling No. 11 of the Secretary of the Treasury, 7 Fed. Reg. 2168, and Press Release No. 32, Press Service No. 30-79, both issued March 18, 1942. Under General Ruling No. 11 all trade or communication with enemy-occupied territory was forbidden unless licensed, and Press Release No. 32 provided:

> "Under today's regulations persons may not trade or communicate with an 'enemy national.' This means that they may not trade or communicate with (a) enemy territory; * * * 'Enemy territory' was defined as meaning the territory of Germany, Italy, and Japan, together with the territory under their occupation or control. The principal areas falling into this latter category were listed by name as a convenience to the public."

carcerating, or otherwise disposing of, civilians remaining in the Islands after the Japanese Invasion. Petitioner's Filipino employees were likewise unavailable as a source of information in respect of its claims against the United States for the reason that, because of the Japanese occupation, they were either under strict control of the Japanese authorities or else had withdrawn to the hills where they spent the duration in guerrilla activity. Nor could any information be obtained from the military personnel familiar with the facts surrounding the requisition by USAFFE of petitioner's San Fernando and La Paz installations since such men had been either killed or placed in prison camps.

Hostilities were terminated in 1945, but many months passed before the chaos and confusion of the war and its aftermath began to subside. When, during 1946, petitioner was permitted to send a skeleton staff to the Philippines, that staff faced the tremendous task not only of reconstructing its installations in order to supply petroleum products, in the first instance, to the American occupation forces and for essential civilian needs, but also of ascertaining all the facts bearing on the loss of petitioner's prewar properties. Little by little the facts were pieced together, but the process of investigation has continued even to the present date.

Petitioner recognized that in the normal course of events claims against the United States had to be prosecuted within the six-year period established under Section 156 of the Judicial Code. In an attempt to avoid any question as to the bar of this statute, petitioner filed its original petition with the Court of Claims on December 5, 1947, stating therein as completely as was then possible its over-all claim

against the United States for properties in the Philippine Islands requisitioned during the war. However, even that information as set forth in the petition was not satisfactory to respondent, for on December 26, 1947, it filed a motion for an order requiring petitioner to make its petition more definite and certain in numerous respects. During the time allowed petitioner within which to determine whether to make objection to respondent's motion, additional information in respect of other installations and supplies requisitioned by the United States was uncovered, and as a consequence a stipulation was filed whereby petitioner consented to the granting of respondent's motion and agreed to file an amended petition on or before March 22, 1948. On March 22, 1948, petitioner moved before the Court of Claims for leave to file its amended petition, and on March 24, 1948, that motion was granted and the amended petition filed (R. 59).

The amended petition changed petitioner's demand for compensation in respect of its San Fernando installation from one for a small quantity of gasoline of a value of $559.64 to one embracing all petroleum products, supplies, buildings and equipment at that location. The amended petition also added a new demand for compensation, based on the USAFFE requisition of petitioner's petroleum products, supplies, buildings and equipment located at La Paz. Respondent filed its motion to dismiss this amended petition both in respect of the additional compensation sought for USAFFE requisition at San Fernando and in respect of the demand for compensation based on the requisition of petroleum products at La Paz, the motion to dismiss being based upon the six-year limitation-of-action provisions of Section 156 of the Judicial Code. After petitioner had obtained

leave from the Court of Claims to file a second amended petition, for the sole purpose of correcting certain typographical errors appearing in its amended petition, respondent's motion to dismiss was allowed to stand against the second amended petition and, after argument thereon, was granted by a divided court.

Decision of the Court of Claims

In holding the statute of limitations to be a defense to petitioner's demand for compensation in respect of its San Fernando and La Paz installations, the Court of Claims decided that (R. 63):

> "In view of this language employed by Congress, and the circumstances of this case, * * * the running of the statute should [not] be tolled as to the claims of the plaintiff against which the motion to dismiss has been directed."

In reaching such conclusion, the majority recognized that, under the federal decisions, "the statute of limitations did not run while the creditor was incapable of suing, owing to the state of war" (R. 61), but "noted that in all the authorities reviewed [in the opinion], the courts in each instance were unavailable to the plaintiffs in question" (R. 62). And it added:

> "* * * in the case before us, the courts of the United States were open at all times to the plaintiff to present its claims against the Government. The plaintiff knew that its stores and supplies had either been requisitioned by the United States Government or destroyed in order to prevent their falling into the hands of the enemy many months ago."

The statement of the majority that the courts of the United States were at all times open to petitioner to present its claims is correct only in the sense that some representatives of petitioner were physically present in the United States after the fall of the Philippines, and if they had had knowledge of the existence of the claims here under consideration, suit could have been brought upon such claims. But without knowledge of the facts or means of ascertaining them, the courts of the United States were as effectively closed to petitioner as if all of its representatives had been interned by the Japanese.

The reference by the majority to petitioner's supposed knowledge of the facts "many months" prior to the decision on the motion to dismiss is not only based on facts outside the record before the court[4], but is wholly irrelevant. It has been held repeatedly that statutes of limitations cease to run during periods of disability arising out of war, and that claimants may not be deprived of the full period of time within which such statutes provide that they may sue: *Braun* v. *Sauerwein*, 10 Wall. 218, 222-23 (U. S. 1869); *Stewart* v. *Kahn*, 11 Wall. 493, 503 (U. S. 1870); *United States* v. *Wiley*, 11 Wall. 508, 513-14 (U. S. 1870); *Hanger* v. *Abbott*, 6 Wall. 532 (U. S. 1867). It is nowhere suggested, and it is clearly not the fact, that, with the period of hostilities deducted, your petitioner had a full period of six years within which to bring its suit.

Chief Judge Jones dissented from the opinion of the Court, and in an opinion rejecting the conclusion reached by the majority, he wrote as follows (R. 63-64):

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[4]Respondent's motion for judgment was made upon the face of the petition (R. 58).

"In the circumstances as disclosed by the pleadings and in the light of conditions that were known to prevail I would overrule the motion to dismiss.

* * * * * * * *

"Statutes of limitations are intended to bring disputes to an issue while information, records and living witnesses are available. But here the shoe is on the other foot. Every reason upon which statutes of limitations are based is on the other side and calls for a suspension of the statutes during a period when there was a blackout of information and facts. *Hanger* v. *Abbott*, 6 Wall. 532; *Braun* v. *Sauerwein*, 10 Wall. 218; *Osbourne* v. *United States*, 164 F. (2d) 767, 769."

We respectfully submit that this statement of the law is in harmony with sound principle and controlling authority, and that it is correct.

Argument

THE RUNNING OF THE STATUTE OF LIMITATIONS WAS SUSPENDED DURING THE PERIOD OF WAR AND ENEMY OCCUPATION.

A.

Principles of Constitutional and General Law under which Statutes of Limitations Developed and Were Held Constitutional Require that Claimants be Given a Reasonable Opportunity to Bring Suit.

Our argument under this point is derived, primarily, from two sources.

The first source relates directly to the intent of Congress in enacting this legislation. Following the mandate of the

Fifth Amendment, Congress has granted to your petitioner, and to other holders of claims similarly founded,[5] a remedy in the Court of Claims for the recovery of the value of their property requisitioned by the Government. We cannot assume that Congress, having thus recognized your petitioner's right and having granted a remedy thereon, has intended by this limitations legislation to take away that remedy before your petitioner, or other claimants similarly situated, could have resort to it.[6] Indeed, in view of the con-

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[5] *i.e.*, by former 28 U. S. C. § 250; present 28 U. S. C. § 1491.

[6] In this view we are strongly supported by statutes enacted during the two world wars and the periods of national emergency which preceded them, authorizing the requisition of property by the Government and its agencies, namely: 55 Stat. 742 (1941), 50 U. S. C. App. § 721 (1944), Requisition of Military Materials for the United States; 54 Stat. 1090 (1940), 50 U. S. C. App. §§ 711, 712 (1944), Requisition for the United States of Export Military Materials; 39 Stat. 1192 (1917), 50 U. S. C. § 82 (1940), Procurement of Ships and Materials during War, Commandeering Factories, etc.; 40 Stat. 241 (1917), 50 U. S. C. § 171 (1940), 40 Stat. 518 (1918), 50 U. S. C. § 171 (1940), 56 Stat. 177 (1942), 50 U. S. C. App. § 632 (1944), all dealing with the Acquisition of Real Property for War Purposes; 40 Stat. 888 (1918), 50 U. S. C. § 172 (1940), Acquisition of Property for Production of Lumber for War Purposes; 40 Stat. 182 (1917), Appropriations for Shipping and Shipbuilding Facilities; and 40 Stat. 438 (1918), Emergency Requisition Powers to the Emergency Fleet Corporation. All those statutes impose upon the Government a scheme and procedure following as closely as possible the scheme and procedure applying when private property is condemned by the Government in time of peace. Under all of them, except the statutes dealing with the acquisition for war purposes of real property and property for the production of lumber (which statutes provide for condemnation proceedings before the courts), the Government was required to determine the value of the property so taken and, if the owner was dissatisfied with such value, to pay a stated percent thereof, and such owner was then authorized to bring suit for the difference between the amount so received and the amount which he claimed to be the value of the property taken.

stitutional mandate against the taking of property without due process of law and fair compensation, it is questionable whether Congress could constitutionally enact legislation which would so operate. In any event this Court, in the absence of controlling statutory language, will not assume that it has intended to do so. As this Court said in *Sohn* v. *Waterson*, 17 Wall. 596, 599-600 (U. S. 1873):

> "* * * When a statute declares generally that no action, or no action of a certain class shall be brought, except within a certain limited time after it shall have accrued, the language of the statute would make it apply to past actions as well as to those arising in the future. But if an action accrued more than the limited time before the statute was passed a literal interpretation of the statute would have the effect of absolutely barring such action at once. It will be presumed that such was not the intent of the legislature. Such an intent would be unconstitutional. To avoid such a result, and to give the statute a construction that will enable it to stand,[7] courts have given it a prospective operation. * * *
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> "* * * In those cases [*Ross* v. *Duval*, 13 Pet. 62, and *Lewis* v. *Lewis*, 7 How. 778] certain statutes of limitation—one in Virginia and the other in Illinois—had originally excepted from their operation non-residents of the State, but this exception had been

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Since the Congress thus imposed upon the Government the obligation to initiate action to compensate private owners for requisitioned property, it certainly did not intend that, in the absence of action by the Government, the owner's rights would be outlawed before he was aware of them.

[7] In *Webster* v. *Cooper*, 14 How. 488 (U. S. 1852), this Court held that a limitations statute of the State of Maine which, by applying to causes of action previously accrued, would have cut off the plaintiff's right to sue for the recovery of land before he became entitled to sue, was inoperative for constitutional reasons.

> afterwards repealed; and this Court held that the non-resident parties had the full statutory time to bring their actions after the repealing acts were passed, although such actions may have accrued at an earlier period. 'The question is,' says C. J. Taney (speaking in the latter of the cases just cited), 'from what time is this limitation to be calculated? Upon principle, it would seem to be clear, that it must commence when the cause of action is first subjected to the operation of the statute, unless the legislature has otherwise provided.' * * *"

And in *United States* v. *Greathouse,* 166 U. S. 601 (1897), this Court, in construing the limitation-of-action provisions of the Act of March 3, 1887 (the Tucker Act, 24 Stat. 505, c. 309), read into it the exception in favor of persons beyond the seas contained in the statute here under consideration, although the Tucker Act itself contained no such exception, saying (pp. 605-06):

> "* * * Although the Act of 1887 prescribes the limitation for suits 'under this [that] act', without making any exception in favor of persons under disability, it should be interpreted as if the proviso in section 1069 of the Revised Statutes were added to section 1 of that act. We could not hold otherwise without deciding, in effect, that the limitation of six years applied to claims accruing to married women and infants during their respective disabilities, as well as to the claims of idiots, lunatics and insane persons. We are unwilling to hold that Congress intended any such result. * * *"

The second source of our argument is historical, and relates to the principles under which statutes of limitation have developed and under which their constitutionality has

been sustained in the face of arguments that they unlawfully destroyed or abridged contract and property rights. Upon this subject Judge Cooley, in his treatise upon "Constitutional Limitations", in a chapter entitled: "Of the Protection to Property by 'the Law of the Land' ", has said (7th Ed., c. XI, pp. 522-23):

> "All limitation laws, however, must proceed on the theory that the party, by lapse of time and omissions on his part, has forfeited his right to assert his title in the law. * * *
>
> "All statutes of limitation, also, must proceed on the idea that the party has full opportunity afforded him to try his right in the courts. A statute could not bar the existing right of claimants without affording this opportunity: if it should attempt to do so, it would be not a statute of limitations, but an unlawful attempt to extinguish rights arbitrarily, whatever might be the purport of its provisions. * * *"

The views so expressed concerning the constitutionality of such legislation have special application when a citizen's constitutional right to compensation for property taken for a national purpose is sought to be defeated by the Government by a limitations statute, applicable only to itself, with the provisions of which he could not have complied. Certain it is that those views correctly represent the historical background and climate of opinion in which the law of limitations—particularly in its relation to such claims as these—developed into its present form. And it is likewise certain that the presumption as to statutory intent and the principles of statutory construction so stated are grounded in reason and fairness and are consonant with the principles now and always applied by this Court in the construc-

tion of Federal limitations statutes. Thus Judge Cooley's statement accurately represents the law of limitation of actions as applied in the Federal courts—a law which has not forgotten its historical sources, or the stages through which it developed. In the divisions of the argument which follow we shall note some of the more important situations in which the courts, and in particular this Court, have applied those principles.

B.

Federal Courts so Construe Federal Statutes of Limitations as to Afford Claimants a Reasonable Opportunity to Bring Suit.

In construing Federal limitations statutes, the Federal courts, and in particular this Court, have uniformly so construed their provisions as to allow to the aggrieved party a reasonable time within which to commence suit. Most frequently, this result has been accomplished by interpreting liberally the language of the statute respecting the time of the accruing of the right to relief by action. In general, they have held that such right to relief did not accrue until the plaintiff was actually placed in a position to bring suit.[8] That principle of construction was applied not only where the plaintiff had no remedy, because the courts were closed or for other like reasons, but also where he could not avail himself of such remedy because of the suppression of the

[8]Angell, Limitations of Actions, 6th Ed., c. VI, p. 37, states that: "The rule of the civil law is that *prescription* only begins to run from the time when the creditor has a full and perfect right to prosecute his demand. The same rule holds, of course, in respect to the legislative *acts of limitation* of Great Britain and of those of the United States." See also 3 Story, Eq. Jur. (14th Ed.) §1975.

acts or of his inability, for other reasons, to bring his ction.

Probably the foremost illustration of the rule in its atter (factual) aspect will be found in cases of fraud and raudulent concealment of facts. In *Holmberg* v. *Amrecht*, 327 U. S. 392 (1946), this Court stated the rule of tatutory construction applying in that situation as follows pp. 396-97):

> "Equity will not lend itself to such fraud and historically has relieved from it. It bars a defendant from setting up such a fraudulent defense, as it interposes against other forms of fraud. And so this Court long ago adopted as its own the old chancery rule that where a plaintiff has been injured by fraud and 'remains in ignorance of it without any default or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party.' *Bailey* v. *Glover*, 21 Wall. 342, 348; and see *Exploration Co.* v. *United States*, 247 U. S. 435; *Sherwood* v. *Sutton*, 5 Mason 143.
>
> "This equitable doctrine is read into every federal statute of limitation. If the Federal Farm Loan Act had an explicit statute of limitation for bringing suit under § 16, the time would not have begun to run until after petitioners had discovered, or had failed in reasonable diligence to discover, the alleged deception by Bache which is the basis of this suit. *Bailey* v. *Glover, supra; Exploration Co.* v. *United States, supra; United States* v. *Diamond Coal Co.*, 255 U. S. 323, 333. * * *"

It has been stated that the statute of limitations will ıot run against a claim unless, at the time of its accrual,

there existed a person by whom and against whom an action might be maintained thereon: *Richards* v. *Maryland Insurance Company,* 8 Cranch 84 (U. S. 1814); Angell, Limitations of Actions, 6th Ed., c. VII, pp. 49 *et seq.* And it has been held that the statute will not run against a claim while the right to sue thereon is suspended by law: *Montgomery* v. *Hernandez,* 12 Wheat. 129 (U. S. 1827); *Borer* v. *Chapman,* 119 U. S. 587, 601-02 (1887)[9]; 2 Wood, Limitations of Actions, 4th Ed., c. XXIII, pp. 1196 *et seq.* In *Richards* v. *Maryland Insurance Company* this Court thus stated the controlling principle (pp. 92-93):

> "* * * The cases which, though literally within the words of the statute, have been held to be without its spirit, are those only in which circumstances intervened, which rendered it impossible or inconsistent with known and established principles, that a cause of action could be revived by the renewal of the contract, or enforced by a suit at law within the time prescribed. The object of the law is, to secure the individual from the machinations of dishonesty, when attempted under the advantages attendant upon lapse of time, loss of papers, and death of witnesses. But when cases present themselves, in which no *laches* can be imputed to the plaintiffs, but great injustice would be done, by applying to such cases the effect of the statute, the conclusion of reason and of the law is, that such cases were not in the mind of the legislature, when enacting that law. Such are the cases of a want of parties, plaintiff or defendant, whereby a temporary suspension of legal remedy takes place."

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[9]Both were actions to recover money due under judgments from which appeals had been taken, the holdings being that the statute did not run while the appeals were pending.

So also, this Court has held that no statute of limitations will run against a Federally created right of action until the plaintiff is entitled to sue thereon. The rule is stated in decisions cited above (*Sohn* v. *Waterson; United States* v. *Greathouse*). It applies also to suits against stockholders of insolvent banks, upon their liability as such stockholders. No statute of limitations will run against such actions until the time fixed for payment of their assessed liability has expired. Thus in *Cope* v. *Anderson*, 331 U. S. 461 (1947), this Court said (p. 464):

> "But even though the period in which suit must be brought is governed by state limitations statutes, we have previously decided that the question of when the applicable state statute of limitations begins to run depends upon when, under federal law, the Comptroller of the Currency, or his authorized agent, is empowered by federal law to bring suit. And the Comptroller's agent, the Receiver here, could not bring these actions until the date for payment fixed by the Comptroller. * * *"

The situations described above are illustrative, not exclusive. *Cf. Webster* v. *Cooper*, 14 How. 488 (U. S. 1852); *Braun* v. *Sauerwein*, 10 Wall. 218 (U. S. 1869).

Following the same underlying principle, it has been declared repeatedly that the time within which a plaintiff may bring suit may not be so shortened by new limitations legislation as to deprive a plaintiff of a reasonable time within which to commence his action. Cooley, Constitutional Limitations, 7th Ed., c. XI, pp. 522-24; *In re Brown*[10], 135

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[10]This is one of a group of cases grouped under title: *McGahey* v. *Virginia*, 135 U. S. 662 (1889).

U. S. 701 (1889); *Terry* v. *Anderson,* 95 U. S. 628 (1877); *Koshkonong* v. *Burton,* 104 U. S. 668, 675 (1881).

It has been held, also, in various situations, that where a party has been deprived by facts beyond his control of his opportunity to appeal within the time limited by law, his time to do so will be extended. It was so held in a civil action, where war prevented the appeal. *The Protector,* 9 Wall. 687 (U. S. 1869). And it has been so held in criminal proceedings, where the prisoner was prevented from taking timely appeal because he was held in custody by the Federal authorities. *Wallace* v. *United States,* 174 F. (2d) 112 (C. C. A. 8th, 1949); *Oddo* v. *United States,* 171 F. (2d) 854 (C. C. A. 2d, 1949), *cert. den.,* 337 U. S. 943 (1949); *Remine* v. *United States,* 161 F. (2d) 1020 (C. C. A. 6th, 1947), *cert. den.,* 331 U. S. 862 (1947); see also *Boykin* v. *Huff,* 121 F. (2d) 865 (App. D. C., 1941). As stated by the court in *Wallace* v. *United States, supra* (174 F. (2d) at p. 114):

> "* * * But, in view of his [the prisoner-appellant's] incarceration and his conceded efforts to take an immediate appeal as soon as he knew of the entry of the order of dismissal, we think this Court properly may assume jurisdiction and consider this case upon the merits. * * *"

The decisions cited above are not based upon the peculiar provisions of the statutes before the courts. Nor are they isolated decisions unrelated to any underlying principle. On the contrary, they all rest upon the single underlying principle that a party aggrieved, upon whom a remedy is conferred by law, will not be deprived of that remedy by a limitations statute so operating as, under the circumstances

of the case, to deny him any real opportunity to exercise it. The decisions of this Court respecting the effect of war upon the running of statutes of limitations, which are cited in the division of the argument which follows, rest upon the same principle.

C.

Your Petitioner's Lack of Knowledge of the Existence of its Claims, Arising out of the Japanese War and Occupation of the Philippines, Prevented the Running of the Statute of Limitations Against the Claims.

The rule that a statute of limitations does not run against a creditor prevented from bringing suit by the existence of war is recognized by this Court and, we believe, by the courts of all the states. In many of the states the period of disability arising out of war is deducted by express statutory provision in computing the period within which suit may be brought. But the rule does not depend upon the existence of such express statutory exception. It exists and is applied although the statute is silent upon the point.[11] It was given an extended exposition by this

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[11]See authorities cited at pp. 22-27 of this brief and, in addition, *First Nat. Bank* v. *Anglo-Oesterreichische Bank*, 37 F. (2d) 564 (C. C. A. 3d, 1930); *Maryland Casualty Co.* v. *Vidigoj*, 270 S. W. 472 (Ky. 1925) (recognizing the general rule and pointing out that a specific statute to the same effect was controlling); *Wirtele* v. *Grand Lodge, A. O. U. W.*, 196 N. W. 510 (Neb. 1923) (as applied to a United States citizen resident in a belligerent nation during the first World War); *Farenholtz* v. *Meinshausen*, 168 N. Y. Supp. 869 (1st Dep't, 1918). See *Sands* v. *N. Y. L. Ins. Co.*, 50 N. Y. 626 (1872) (wherein the court by way of dictum stated that war extends the statute of limitations). *Cf.* Restatement, Property § 221(1)(d).

Court in the early case of *Braun* v. *Sauerwein,* 10 Wall. 218 (U. S. 1869), in which a Maryland statute of limitations was pleaded against a claim for money illegally exacted by the Collector of Internal Revenue, where the claimant was prevented from bringing immediate suit by the provisions of a Federal statute. Mr. Justice Strong, writing for a unanimous Court, discussed at length the judicial exception to the prescribed period of limitation where war prevented the bringing of suit, and concluded (p. 223):

> "It seems, therefore, to be established, that the running of a statute of limitations may be suspended by causes not mentioned in the statute itself. * * *"

And he said concerning the decisions holding the statute of limitations to have been suspended by reason of war (pp. 222-23):

> "* * * They all rest on the ground that the creditor has been disabled to sue, by a superior power, without any default of his own, and, therefore, that none of the reasons which induced the enactment of the statutes apply to his case; that unless the statutes cease to run during the continuance of the supervening disability, he is deprived of a portion of the time within which the law contemplated he might sue."

This Court and the lower Federal courts have held repeatedly that no statute of limitations will run against a claimant who is prevented by war from bringing suit within the period of statutory limitation. The rule was first applied to claims held by British subjects, which had accrued or existed during the War for Independence. *Hopkirk* v. *Bell,* 3 Cranch 454 (U. S. 1806). In that case

this Court read into a statute of limitations of Virginia an unexpressed exception, based upon the treaty of peace with Great Britain, suspending the running of the Virginia statute during the continuance of hostilities. The rule was applied in a long series of cases following the War between the States. *Hanger* v. *Abbott,* 6 Wall. 532 (U. S. 1867); *The Protector,* 9 Wall. 687 (U. S. 1869) (involving a time limitation [5 years] upon plaintiff's right to apply for review of a judgment by writ of error, etc.); *Levy* v. *Stewart,* 11 Wall. 244 (U. S. 1870); *Stewart* v. *Kahn,* 11 Wall. 493 (U. S. 1870); *United States* v. *Wiley,* 11 Wall. 508 (U. S. 1870); *Brown* v. *Hiatts,* 15 Wall. 177 (U. S. 1872); *Batesville Institute* v. *Kauffman,* 18 Wall. 151 (U. S. 1873) (holding that the lien of a judgment was not lost though not enforced within three years, as required by statute); *Adger* v. *Alston,* 15 Wall. 555 (U. S. 1872); *Semmes* v. *Hartford Insurance Company,* 13 Wall. 158 (U. S. 1871) (holding that a contract limitation of one year within which to bring suit was rendered inoperative by war); *Ross* v. *Jones,* 22 Wall. 576 (U. S. 1875); *Mayfield* v. *Richards,* 115 U. S. 137 (1885) (holding that a Federal statute tolling the statute of limitations during war applies to actions in state courts involving state limitations statutes). Recently the rule was applied to a disability arising out of the war with Japan. *Osbourne* v. *United States,* 164 F. (2d) 767 (C. C. A. 2d, 1947). There the libellant was prevented from bringing suit against the United States for a personal injury suffered prior to hostilities because of his internment by the Japanese during the period of the war with Japan.

As we have pointed out, the Court of Claims recognized that under the above decisions "the statute of limitations did not run while the creditor was incapable of suing, owing

to the state of war" (R. 61), but the majority—we submit erroneously—"noted that in all the authorities reviewed above, the courts in each instance were unavailable to the plaintiffs in question" (R. 62).

The Court of Claims was in error in its assumption that in all of this Court's decisions suspending the statute of limitations by reason of war the creditors were incapable of suing, or the courts were not available to them. In *United States* v. *Wiley, supra,* it was argued that because the United States was a creditor, suing its own citizen (though resident in a rebellious state), the courts were open to it, and the statute, therefore, continued to run. This Court rejected that argument,[12] saying (pp. 513-14):

> "* * * True, the *right* of a citizen to sue during the continuance of the war was suspended, while the *right* of the government remained unimpaired. But it is the loss of the ability to sue rather than the loss of the right that stops the running of the statute. The inability may arise from a suspension of right, or from the closing of the courts, but whatever the original cause, the proximate and operative reason is that the claimant is deprived of the power to institute his suit. Statutes of limitations are indeed statutes of repose. They are enacted upon the presumption that one having a well-founded claim will not delay enforcing it beyond a reasonable time, if he has the power to sue. Such reasonable time is therefore defined and allowed. But the basis of the presumption is gone whenever the ability to

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[12]Cf. *Adger* v. *Alston, supra; Batesville Institute* v. *Kauffman, supra; Ross* v. *Jones, supra,* each holding in respect of the War between the States that the statute of limitations was suspended in actions between citizens of the Confederate States, *i.e.*, between citizens of the same belligerent.

> resort to the courts has been taken away. In such a case the creditor has not the time within which to bring his suit that the statute contemplated he should have. * * *"

We respectfully submit that the creditor who has been deprived, by war, of knowledge of the existence of his claim, has thereby lost the ability to sue upon it within the meaning of this decision, and if the decision of the Court of Claims here under consideration be upheld, such a creditor is deprived of the reasonable time to sue which the legislature intended to grant him.

It is submitted that the majority of the Court of Claims has completely misunderstood the ground upon which this Court's decisions rest. Those decisions make no distinction between the various consequences of war, by reason of which suit is actually an impossibility, nor do any of them hold that if the war-originated disability is of one kind, or arises from one source, the statute is tolled, and if from another it is not. Specifically, the decisions of this Court are not open to the construction placed upon them by the court below—*i.e.*, that the statute is not tolled by lack of knowledge, as a consequence of war and enemy occupation, of the existence of a claim. Quite to the contrary, this Court's leading decisions have repeatedly emphasized the illegality and impossibility of obtaining information concerning the claim from the hostile territory as one of the dominant factors compelling the decision; as, see *Levy* v. *Stewart, supra,* at pp. 253-54; *Stewart* v. *Kahn, supra,* at p. 505; *Hanger* v. *Abbott, supra,* at p. 535. Obtaining such information was equally unlawful and impossible in this case.[13]

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[13]See footnote, pp. 5-6, *supra.*

This Court's decisions, and the general law respecting the suspension of statutes of limitations by reason of war, we submit, rest simply upon the fact that, actually, the existence of war prevented the bringing of actions within the time limited by the statutes. They involve, not technical considerations, nor metaphysical distinctions between lack of knowledge and lack of power,[14] but rules of substantial justice. They relate to the basic principles of the law of limitations which are stated earlier in the argument. In every one of this Court's principal decisions it has referred to the existence of a reasonable time within which to sue, to laches,[15] to the presumptions ordinarily arising from the lapse of time without suit, and to the fact that those factors which ordinarily justify the enactment and application of statutes of limitations are not present when failure to bring suit is the result of war. *Hauger* v. *Abbott*, *supra*, at p. 538; *United States* v. *Wiley*, *supra*, at pp. 513-14; *Levy* v. *Stewart*, *supra*, at pp. 253-55. In all of them the decision rests upon those factors. They are the same factors which produced this Court's decisions suspending the running of the statute in actions grounded upon fraud where the plaintiffs were without knowledge of the facts: *Holmberg* v. *Ambrecht*, *supra*; and in actions temporarily stayed by statute: *Braun* v. *Sauerwein*, *supra*; or by the pendency of judicial proceedings: *Montgomery* v. *Hernandez*; *Borer* v. *Chapman*, both *supra*. Basically, they are the same factors

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[14] In point of fact, this Court's decisions do not recognize any such distinction. "Concealment of fraud prevents a party from knowing that he has been injured and has a cause of action. He *cannot* take any steps to obtain redress." *Amy* v. *Watertown* (*No. 2*), 130 U. S. 320, 325 (1889). (Italics supplied.)

[15] Justifiable lack of knowledge of the facts is the element most commonly present and emphasized in decisions involving laches and the presumptions arising from lapse of time.

which have caused this Court to declare unconstitutional statutes of limitations failing to provide a reasonable time within which to sue: *In re Brown, supra;* and to construe all statutes limiting time for suit in such a manner as to provide a reasonable time within which the claimant may enforce his claim: *Sohn* v. *Waterson, supra.* They are fully applicable to the case at bar. In ignoring them, we respectfully submit that the Court of Claims committed error.

Few cases have reached the courts—state or Federal—in which a plea of the statute of limitations finds so little support in the principles underlying such statutes, or in sound judicial construction, or in disclosed Congressional policy, or in basic fairness. The Government, having taken your petitioner's property without a hearing or any semblance of due process, now seeks to defeat its Constitutional right to compensation by the mere lapse of time. There is not any probability, and there has not been any contention, that the Government's position has worsened, either by loss of evidence or otherwise, by reason of such lapse. It is clear that the intervention of war constituted an insurmountable obstacle to the obtaining of knowledge by your petitioner concerning the requisitioning of its property, and no fact appears to support a different conclusion. It is clear also that, by reason of such lack of knowledge and the interposition of the statute, your petitioner has been deprived of any opportunity to present its case—thus losing through facts beyond its control its Constitutional right, not only to fair compensation, but also to due process and the protection of the law of the land in connection with the taking of its property by the Government.

Conclusion

It is respectfully submitted that the judgment of the Court of Claims of the United States dismissing as being barred by the statute of limitations parts of the Seventh and Fifteenth Claims stated in petitioner's second amended petition is wrong and should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 332

STANDARD-VACUUM OIL COMPANY,
Petitioner,

against

THE UNITED STATES OF AMERICA,
Respondent.

PETITIONER'S BRIEF IN REPLY

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

STANDARD-VACUUM OIL COMPANY,
Petitioner,

against

THE UNITED STATES OF AMERICA,
Respondent.

No. 532

PETITIONER'S BRIEF IN REPLY

Statement

In our original brief we argued that, in construing Federal limitations statutes, the Federal Courts, and in particular this Court, have so construed their provisions as to allow to the aggrieved party a reasonable time within which to commence suit. We said that such construction rested upon two basic foundations. The first is the intent of Congress; that legislative body, having granted a remedy to your petitioner pursuant to Constitutional mandate, will not be presumed to have intended to take away that remedy by a statute of limitations with the terms of which it could not have complied. The second is historical, and relates to the principles under which statutes of limitations have developed, and under which their constitutionality has been sustained in the face of contentions that they unlawfully destroyed or abridged contract and property rights. In that

connection we pointed to authorities declaring that statutes of limitations which destroy or unreasonably abridge a claimant's time within which to bring suit violate Constitutional principles. We pointed out that those authorities and the Constitutional principles which they enunciate are peculiarly applicable when the claim sought to be barred by the statute is not merely based upon the common law, but is directly founded upon the Constitutional right to compensation for property taken for a public use. Finally, we pointed to a number of situations in which unexpressed exceptions have been read into limitations statutes by the courts. All of them, we said, involve the same basic principle—that a claimant is entitled to a reasonable opportunity to invoke his remedy. One of those situations, involving the exception arising out of war, is the one now before the Court. It is not an independent exception, unrelated to the general law, but is simply an application of the general principle which we have stated.

The Government, in its brief in answer, has left unanswered most of our argument, including all of the basic principles upon which that argument rests. It has attempted to treat this Court's decisions respecting the effect of war upon the statute as *sui generis*, although clearly the decisions themselves (as, see *Braun* v. *Sauerwein*, 10 Wall. 218 (U. S. 1869) do not do so. It contends that the reading of any judicial exception into this statute of limitations is precluded by its clear and unambiguous language. It contends, also, that all the cases in which the statute was held suspended by war rest upon a disability arising out of law and not facts; that the plaintiff was forbidden by law to sue, not that he was prevented from doing so by facts beyond his control. It contends, in addition, that in all

cases in which the statute was so suspended, the plaintiff was denied access to the courts. It contends, finally, that if the statute was suspended, such suspension cannot exceed "three years after the disability has ceased" (that being the provision of the statute with respect to the disabilities for which it makes express provision), that the disability involved in this case ended on February 27, 1945, when civil administration was restored to the Philippines, and that action upon the claims here involved was not commenced within that time. Finally, it suggests (footnote, page 32) that if the judgment is reversed, the cause should be remanded with directions that your petitioner amend its pleadings to allege the facts stated in our main brief with respect to petitioner's inability to sue, and that the issues so raised be separately tried. Although the desirability of a separate trial of such issues may depend upon factors of convenience to be passed upon by the trial court, we have no objection, if this Court deems it proper, to a direction that the facts upon which petitioner relies be pleaded either by amendment to the petition or by a reply to an answer which shall plead the limitations defense.

Argument

A.

THE RUNNING OF THE STATUTE OF LIMITATIONS WAS SUSPENDED DURING THE PERIOD OF WAR AND ENEMY OCCUPATION.

We concede "the general rule" to be "that the language of the act must prevail * * *." (*Amy* v. *Watertown* (*No. 2*), 130 U. S. 320, 324 (1889); Gov't. Br., p. 11.) But the existence of the "general rule" does not prove the absence

of exceptions to it, as that decision itself recognizes. "Concealment of fraud prevents a party from knowing that he has been injured and has a cause of action. He cannot take any steps to obtain redress. * * * There [also] is one class of cases which is excluded from the operation of the statute by act of law itself * * *. This class embraces those cases in which no action can be brought at all, either for want of parties capable of suing, or because the law prohibits the bringing of an action. In such cases the general law operates as a qualification, or tacit condition of the particular statute. * * * So where a citizen of one country has a cause of action against a person who resides in another country at war with his own, the law of nations forbids any intercourse between them, and suspends all suits and actions by the one against the other; and, therefore, the time during which the right to sue is thus suspended, is not reckoned as any part of the time given by the statute of limitations for bringing an action." (*Amy* v. *Watertown* (*No. 2*), at pp. 325-26; insert in brackets ours.) That decision manifestly does not support the Government's contention that war will not toll the statute.

This Court has held repeatedly that situations of unusual hardship, of such character as to indicate that they were not within the contemplation of Congress in enacting legislation, will be excluded from its operation by judicial exception. So in *Markham* v. *Cabell*, 326 U. S. 404 (1945), it restricted the application of section 9(e) of the Trading with the Enemy Act to claims arising out of the first world war, saying (p. 409): "The policy as well as the letter of the law is a guide to decision. Resort to the policy of the law may be had to ameliorate its seeming harshness or to qualify its apparent absolutes as *Holy Trinity Church*

. *United States*, 143 U. S. 457, illustrates." In that case ection 9(e), if applied, would have outlawed plaintiff's nly remedy. Similarly, in *United States* v. *American Trucking Associations, Inc.*, 310 U. S. 534, 543 (1940), he Court said:

> "There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words."

here the Court limited the normal meaning of the word employee" in section 204 of the Motor Carrier Act, in rder to give the section a meaning consonant with the gen ral policy of Congress, as disclosed in other legislation.

In *Holy Trinity Church* v. *United States*, 143 U. S. 457 1892), which was cited as controlling in *Markham* v. *Cabell, supra*, the Court read an exception into a statute orbidding the importation of alien labor into the United States under contract to perform labor there, in favor of an English clergyman brought into the United States to act s rector of the plaintiff in error. The decision cites umerous situations in which unexpressed excep ons have

been read into statutes. The Court said concerning them (p. 459):

> "* * * It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act. * * *"

There are many decisions of like effect; as, see *Ozawa* v. *United States*, 260 U. S. 178 (1922); *Fleischmann Co.* v. *United States*, 270 U. S. 349 (1926); *United States* v. *Katz*, 271 U. S. 354 (1926).

The Government's contention that in all the cases in which unexpressed exceptions arising out of war were read into limitations statutes, the basis of the exception was a *legal* rather than a *factual* disability to sue, is squarely contrary to this Court's decision in *United States* v. *Wiley*, 11 Wall. 508 (U. S. 1870), which is cited and quoted at length at pages 24 and 25 of our first brief. That case, squarely in point upon this contention, the Government's brief elects to ignore. The argument is inconsistent, also, with *Kendall* v. *United States*, 107 U. S. 123 (1882). There the plaintiff was a citizen of the Confederacy, who originally

was prevented by statute from bringing suit, and who brought his action well within the period of limitation after the lifting of the disability. The Court remarked (p. 126) that the United States "was in no wise responsible" for the plaintiff's inability to bring suit at an earlier date, and ruled that the action was barred. Finally, the argument is at variance in principle with the Court's holding in *Adger* v. *Alston,* 15 Wall. 555 (U. S. 1872), *Batesville Institute* v. *Kauffman,* 18 Wall. 151 (U. S. 1873, and *Ross* v. *Jones,* 22 Wall. 576 (U. S. 1875), in all of which state limitations statutes were held suspended though both parties to the actions resided within the Confederacy. There was no showing that the courts of the southern states whose limitations legislation was invoked had been closed to those parties, or to such litigation, by any statute or rule of common law, either state or federal; the disability was not legal.

Similarly, the Government's contention that statutes of limitation are suspended by war only when plaintiffs are denied access to the courts is not borne out by the decisions, and is at variance with sound principle. That was not the situation presented in *Osbourne* v. *United States,* 164 F. 2d 767 (C. C. A. 2d, 1947). In that case the plaintiff was not denied access to the courts of the United States, but was physically prevented from bringing suit therein by his internment by the Japanese. Similarly, in *Adger* v. *Alston, Batesville Institute* v. *Kauffman* and *Ross* v. *Jones,* to which we refer in the preceding paragraph, the courts of the Confederacy were not closed to the parties. It is, of course, true that, for various periods, the trial of cases and the hearing of appeals was suspended in most or all of the Confederate States during the Civil War. But

that fact alone did not prevent the timely commencement of actions in those courts.*

In summary, the substance of the Government's argument is that the statute of limitations was not tolled in favor of your petitioner, because: "the courts of the United States were open during the time in question, and petitioner had standing to sue". (Gov't. Brief, pp. 26-27). But that was the case also in *United States* v. *Wiley*, 11 Wall. 508 (U. S. 1870), and in *Osbourne* v. *United States*, 164 F. 2d 767 (C. C. A. 2d). In *Adger* v. *Alston*, *Batesville Institute* v. *Kauffman* and *Ross* v. *Jones* (all *supra*) the parties were Confederates, the courts of the Confederacy were not closed to them by any law and they also had standing to sue in those courts. The Government's attempt to distinguish this case upon that basis is without merit.

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*The Government, in footnote 13 on page 27 of its brief, cites authorities holding that as between citizens of the Confederate states, the statute of limitations was not suspended by the Civil War. All of them, apparently, rest upon the fact that the courts of the Confederacy remained available to the parties. Thus in *Lockhart* v. *Horn*, Fed. Cas. No. 8445 (affirmed on other points, 17 Wall. 570), Judge Bradley pointed out (p. 753) that: "It is a fact that the Courts of Alabama were open to all citizens of the Confederate States, and there was no law to prevent their resorting thereto." And in *Cross* v. *Sabin*, 13 Fed. 308, 313 (C. C. Tennessee, 1882), the court pointed out:

> "* * * We know that the courts of Washington county were not regularly held at the times designated by law, but all the machinery provided for the issuance and service of process existed; and, although suits then brought could not have been tried until after the cessation of hostilities, there was no obstacle in the way of commencing them prior to August, 1863, at which time Mathes had held for more than seven years; and upon these facts, we think, the statute of limitations was not suspended as between the parties to this suit."

Clearly *McIver* v. *Ragan*, 2 Wheat. 25 (U. S. 1816), which the Government has briefed at length (pp. 25-29), does not support its argument. There, the plaintiff's only "disability" consisted of his alleged lack of power to obtain a survey of the land in suit, because one corner (containing the point at which the survey began) lay within forbidden Indian territory. But as Chief Justice Marshall pointed out, that fact did not prevent the plaintiff from *commencing* his action. In the case at bar, your petitioner's lack of knowledge that its property had been requisitioned did prevent it from commencing its action. Unlike the *McIver* case, "The difficulty under which the plaintiff[s] labored, respected * * * the institution of their suit", and not its trial.

B.

PETITIONER'S CLAIM IS NOT BARRED BY THE PROVISION OF SECTION 156, OUTLAWING SUITS NOT COMMENCED WITHIN THREE YEARS AFTER DISABILITY CEASED.

The decisions of this Court hold, without exception, that statutes of limitations do not run during periods of disability arising out of war, and that claimants may not be deprived of the full period of time within which statutes provide that they may sue: *Braun* v. *Sauerwein*, 10 Wall. 218, 222-23 (U. S. 1869); *Stewart* v. *Kahn*, 11 Wall. 493, 503 (U. S. 1870); *United States* v. *Wiley*, 11 Wall. 508, 513-14 (U. S. 1870); *Hanger* v. *Abbott*, 6 Wall. 532 (U. S. 1867). The Government contends that this rule, so long and so repeatedly declared, should now be abandoned out of deference to the statute, which makes a different provision respecting suits by persons formerly under disability by

reason of marriage, infancy, idiocy, insanity or absence beyond the seas. If the effect of those disabilities upon the power to bring suit promptly were either similar or comparable to the effect of a disability arising out of war, the contention might have some force. It is clear, however, that there is no such similarity. The effects of the Japanese War present far greater obstacles to the discovery and prosecution of claims than arise out of infancy, coverture, absence from the country or the other disabilities named in the statute. It is also a fact that the war itself has not yet been declared at an end—a fact whose theoretical and practical bearing upon the question should not be overlooked.

But even if the Government's major premise were accepted, its conclusion would not follow. We may assume, by analogy to the statute, that claims should be barred three years after the war's termination. Such termination may mean the declaration, by the President or by Congress, that the war is ended. There has been no such declaration. Or it may mean the termination of actual hostilities. The Government makes no claim that hostilities had ceased on February 27, 1945, when civil administration was declared restored to the Philippines; it concedes that (Gov't. Br., p. 30): "Not all of the Philippines were liberated by February of 1945 * * *."* In point of fact it was many months before peace and order were restored, and before your petitioner was placed in a position to ascertain that its properties had been requisitioned. There is no contention that in February, 1945, peace and civil administration had actually been restored at San Fernando, La Union, or at La Paz,

*The claims here involved were filed in the court below on March 24, 1948, less than three years and one month after that date; see Gov't. Brief, p. 30.

Iloilo City, where the property involved in the Seventh and Fifteenth claims was situated (R. 15, 27). Under those circumstances, the mere issuance, at the center of the far-flung Philippine territory, of a declaration of restoration of civil administration, has no bearing upon your petitioner's actual situation, nor significance under the authorities respecting the effect of war, which we have cited.

We have difficulty in following the respondent's argument that, because civil administration was declared restored in February, 1945, your "petitioner was no longer *completely* denied access to information" (Gov't. Br., p. 30) concerning claims which had arisen in territories which may not then have been liberated. Nor is it apparent to us why the fact that your petitioner seasonably filed claims covering properties requisitioned in some areas of the Philippines indicates that it must have known, or should have known, of the existence of other claims for the taking of other properties in other areas, perhaps then unliberated.* Certainly the fact that such unfiled claims were not "different in character"—though possibly originating in distant or non-liberated areas—does not support the Government's charge that failure to obtain data concerning them "can be ascribed, therefore, only to the oversight or laches of

*Petitioner's amended petition filed on March 24, 1948, and further amended on June 1, 1948, for the sole purpose of correcting certain typographical errors appearing therein, indicates that not any claim was made to the United States Army Claims Service in respect of petitioner's San Fernando and La Paz installations. The fact is, however, that in late April of 1948, petitioner filed with the United States Army Claims Service a claim in respect of petroleum products requisitioned by USAFFE at its San Fernando installation. That claim was thereafter paid by the Army Claims Service, even though it had been filed more than six years after the requisition thereof.

petitioner" (Gov't. Br., pp. 30, 31). Nor can we ascribe great weight to the argument that the Government, which must know whether it took these properties, was entitled to notice from a party having no such knowledge, "before the deficiency of proofs arising from [these] ancient transactions is made irreparable" (Gov't. Br., p. 31). It seems that the mere statement of such contentions is sufficient to refute them.

CONCLUSION

It is respectfully submitted that, for the reasons stated in this and in our original brief, the judgment of the Court of Claims of the United States dismissing as barred by the statute of limitations parts of the Seventh and Fifteenth Claims stated in your petitioner's second amended petition is wrong and should be reversed.

Respectfully submitted,

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October 12, 1949.

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 532

STANDARD-VACUUM OIL COMPANY, PETITIONER

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 59-64) is not yet reported.

JURISDICTION

The judgment of the Court of Claims was entered on November 1, 1948 (R. 64). The petition for a writ of certiorari was filed on January 28, 1949. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether, in this action to recover compensation for property taken for military purposes by the United States from petitioner in the Philippine Islands in December 1941 and January 1942, the jurisdictional statute of limitations upon causes cognizable in the Court of Claims was suspended during the Japanese occupation of the Philippine Islands by reason of the fact that petitioner, a Delaware corporation, was unable to obtain complete information about the property taken.

STATUTE INVOLVED

Section 156 of the Judicial Code, 28 U.S.C. (1940 ed.) 262,[1] provides in part as follows:

> Every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court * * * within six years after the claim first accrues. The claims of married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court * * * within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from be-

[1] Now 28 U.S.C. 2501.

ing barred, nor shall any of the said disabilities operate cumulatively.

STATEMENT

On December 5, 1947, petitioner, a Delaware corporation, brought suit in the Court of Claims to recover just compensation for certain of its properties at San Fernando, La Union, La Paz, and Iloilo City, Philippine Islands, which the United States Armed Forces of the Far East (USAFFE), in December 1941 and January 1942, allegedly requisitioned for military purposes or destroyed to prevent capture by the military forces of Japan, with whom the United States was then at war (R. 1). The claims here involved, the Seventh (R. 15) [2] and the Fifteenth (R. 27-28) whose value is but a small portion of the total recovery sought,[3] were added in an amended petition filed on March 24, 1948 (R. 1).

On April 12, 1948, respondent moved to dismiss, as barred under the provisions of Section 156 of the Judicial Code, 28 U.S.C. (1940 ed.) 262, the Fifth claim of the amended petition, that part of the Seventh claim which is stated in paragraphs 64 to 67, inclusive, of the amended petition, and the Fifteenth claim of the amended petition, or in the alternative, so much of the Fifteenth claim as re-

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[2] Specifically, paragraphs 64 to 67, inclusive, of the Seventh claim.

[3] The two claims total $263,132.85, plus interest; the second amended petition prays judgment in the amount of $3,832,935.09, plus interest (R. 29).

lates to the alleged requisition by respondent of petroleum supplies (R. 58). By leave granted subsequent to respondent's motion to dismiss, petitioner, on June 1, 1948, duly filed a second amended petition, from which it appears that the Fifth claim accrued within six years prior to the filing of the petition (R. 1, 12-13).

Prior to the present litigation, at various times from January 16, 1946, to September 10, 1947 (R. 4-5, 7-8, 9, 12, 14, 16, 17, 19, 21, 22, 23, 25, 27), petitioner had sought administrative relief by filing with the United States Army Claims Service, Manila, Philippine Islands, a proof of claim for each of thirteen of the fifteen claims stated in the second amended petition. Such proofs of claim had been filed with the Army Claims Service well within the six-year period of limitations imposed by Section 156 of the Judicial Code, 28 U.S.C. (1940 ed.) 262, upon actions cognizable in the Court of Claims, and claims were subsequently seasonably filed below. However, no such proof of claim was filed with the Claims Service for the claims here involved, and admittedly, unless the running of the statute was suspended, they were not seasonably filed below.

The court below, in answering the question therein raised as to "whether the statute of limitations is suspended by reason of the fact that the plaintiff was unable to make complete and timely claims against the United States by reason of the

occupation of the Philippine Islands by the military forces of the Japanese" (R. 60), noted the fact that proof of certain claims had been filed by petitioner with the United States Army Claims Service on May 3, 1946, and found, therefore, that "At that time, which was over a year and one-half prior to the six-year limitation, it would have been possible for the plaintiff to have filed with this Court proper claims which, even though they may not have been complete and accurate, could nevertheless have been amended as soon as the full facts concerning them came into possession of the plaintiff. The claims could have thus been preserved against the running of the statute of limitations. The language of Section 156 of the Judicial Code, *supra,* is clear and unambiguous * * *. In view of this language employed by Congress, and the circumstances of this case, we do not think that the running of the statute should be tolled as to the claims of the plaintiff * * *." (R. 62-63.) Accordingly, the court below granted respondent's motion to dismiss on November 1, 1948 (R. 64).

ARGUMENT

1. It has long been established that the enumeration by the legislature of specific exceptions to a statute of limitations excludes all others. See 1 Wood, *Limitations* (4th ed. 1916), p. 55; 3 Sutherland, *Statutory Construction* (3d ed. 1943), p. 388. "The general rule is that the language of the act must prevail, and no reason based on apparent in-

convenience or hardship can justify a departure from it." *Amy* v. *Watertown,* 130 U. S. 320, 324; *Kendall* v. *United States,* 107 U. S. 123, 125; *McIver* v. *Ragan,* 2 Wheat. 25; *Musgrave* v. *McManus,* 24 N. M. 227, 232; *Powell* v. *Koehler,* 52 Ohio 103, 118-119. However, one exception has been judicially[4] engrafted upon such statutes. It has been held that the running of the statute is suspended as to enemy aliens during a state of war. *Hanger* v. *Abbott,* 6 Wall. 532; *The Protector,* 9 Wall. 687; *Levy* v. *Stewart,* 11 Wall. 244; *Brown* v. *Hiatts,* 15 Wall. 177; *First Nat. Bank* v. *Anglo-Oesterreichische Bank,* 37 F. 2d 564 (C.A. 3); *Borovitz* v. *American Hard Rubber Co.,* 287 Fed. 368 (N.D. Ohio); *Colorado Fuel & Iron Co.* v. *Industrial Commission,* 73 Colo. 579; *Maryland Cas. Co.* v. *Vidigoj,* 207 Ky. 841; *Wirtele* v. *Grand Lodge, A.O.U.W.,* 111 Neb. 302; *Farenholtz* v. *Meinshausen,* 181 App. Div. 474; *Siplyak* v. *Davis,* 276 Pa. 49; *Wall* v. *Robson,* 2 Nott & McCord [S.C.] 498. The justification for this implied exception is apparently grounded on the rationale of statutes of repose that claims should be extinguished when made stale because of the negligence or laches of the plaintiff. If disability to sue is imposed through no fault of the plaintiff, it is unjust to bar the claim. Such a supervening disability is produced either when intercourse between belligerent litigants is

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[4] This exception has also been engrafted as a result of treaty and subsequent legislation. See, e.g., *Hopkirk* v. *Bell,* 3 Cranch 454; Act of June 11, 1864, 13 Stat. 123.

interdicted and access to each other's courts denied, or when the courts are actually closed because of unsettled conditions.

It is to be noted, however, that not every supervening disability, not the fault of plaintiff, is sufficient to raise an implied exception to the statute of limitations. As Mr. Justice Bradley pointed out in *Amy* v. *Watertown,* 130 U. S. 320, 323-324, in limiting the prior overbroad generalization drawn from *Hanger* v. *Abbott, supra* "It is said by Mr. Justice Strong, in *Braun* v. *Sauerwein,* 10 Wall. 218, 223, 'It seems, therefore, to be established, that the running of a statute of limitation may be suspended by causes not mentioned in the statute itself.' The observation is undoubtedly correct; but the cases in which it applies are very limited in character, and are to be admitted with great caution; otherwise the court would make the law instead of administering it." In line with this policy of "great caution," it was held that statutes of limitation were not suspended as between citizens of the confederate states during the Civil War unless the courts were actually closed.[5] *Lockhart*

[5] State statutes of limitation were held not to be a bar to suit in the *federal courts* located in the insurrectionary states after the Civil War since those courts were closed during the war. *Adger* v. *Alston,* 15 Wall. 555; *Batesville Institute* v. *Kauffman,* 18 Wall. 151; *Ross, Adm'r* v. *Jones,* 22 Wall. 576. The "statute of limitations did not run against suitors having a right to sue in the Federal courts." *Id.* at 577.

It should also be noted that this Court, in the leading case of *Hanger* v. *Abbott,* 6 Wall. 532, distinguished earlier contrary English decisions by pointing out that "all of those decisions were made between parties who were citizens of the same jurisdiction * * *." *Id.* at 540.

v. *Horn,* Fed. Cases No. 8445 (C.C.S.D. Ala.), affirmed, 17 Wall. 570; *Cross* v. *Sabin,* 13 Fed. 308 (C.C.E.D. Tenn.); cf. *Smith* v. *The Charter Oak Life Ins. Co.,* 64 Mo. 330. Statutes of limitation were not tolled during time of war as to an alien national of an allied country, residing therein, *Poccardi* v. *Ott,* 83 W. Va. 166, 168; nor as to alien nationals of non-belligerent countries, residing therein, despite great obstacles to communication and transportation produced by war. *Industrial Commission* v. *Peppas,* 71 Colo. 25; *Inland Steel Co.* v. *Jelenovic,* 84 Ind. App. 373; *Sadowski* v. *Hubbard Steel Foundry Co.,* 100 Ind. App. 233; *Gorski's Case,* 227 Mass. 456; *Kolundjija* v. *Hanna Ore Mining Co.,* 155 Minn. 176; *Lipmanowich* v. *Crookston Lumber Co.,* 168 Minn. 332; see *Industrial Commission of Ohio* v. *Rotar,* 124 Ohio 418; *Siplyak* v. *Davis,* 276 Pa. 49, 58. The difficulties of petitioner were certainly no more severe than those under which plaintiffs labored in the above cases; they were cut from the same cloth. Since the courts of the United States were open during the period in question, and since petitioner is not an enemy alien, but a Delaware Corporation, the above cases would seem dispositive of petitioner's attempt to enlarge the scope of the implied war exception and thus bring itself within its coverage.

In so far as our search of the case-law reveals, the war exception has twice, with "great caution" seemingly been extended beyond the enemy alien

and "closing of the courts" situation. Although petitioner relies on these cases to support a further extension of the war exception herein, we submit that those decisions offer no such support. As the court below noted, after an extensive analysis of the cases, "* * * in all the authorities reviewed above, the courts in each instance were unavailable to the plaintiffs in question" (R. 62).

In *Braun* v. *Sauerwein*, 10 Wall. 218, 223, the question before this Court was whether the Maryland statute of limitations was suspended by the Act of July 13, 1866, 14 Stat. 152, which provided that no suit shall be maintained in any court for the recovery of a tax until appeal shall have been duly made to the Commissioner of Internal Revenue and his decision had thereon. The Court, after discussing *Hopkirk* v. *Bell*, 3 Cranch 454, and *Hanger* v. *Abbott, supra*, concluded that the running of the statute may be suspended by causes not mentioned in the statute itself, and posed the issue thusly:

> Assuming, then, that the act of Congress did, for a time, stop the running of the Maryland statute against the plaintiff, the inquiry remains, how long did the suspension continue? * * * Manifestly, only so long as he was prevented from suing by the act of Congress. The act * * * prohibited a suit until he should appeal to the Commissioner of Internal Revenue, and until his appeal should be decided

> * * *. The interval between the appeal and its decision, then, was the entire period during which he was disabled by the act. If, in fact he was disabled a longer time, the prolonged disability was caused by his own neglect to appeal.

The court then held that the statute of limitations had run through plaintiff's own neglect before the act of Congress could suspend its operation. Thus, aside from the fact that discussion of the war exception was *obiter*, the extension of the *Hanger* v. *Abbott* doctrine to the disability caused by an act of Congress was based on the denial to plaintiff of access to the courts, which is the principle behind the enemy alien exception.

The same rationale—denial of access to the courts—was the basis for the suspension of the statute in *Osbourne* v. *United States*, 164 F. 2d 767 (C. A. 2). In that case, the Court of Appeals reasoned that "All statutes of limitation are based on the assumption that one with a good cause of action will not delay bringing it for an unreasonable period of time; but, *when a plaintiff has been denied access to the courts, the basis of the assumption has been destroyed.*" [Emphasis added] *Id.* at 769.

Here, petitioner does not contend that the courts were unavailable to it, but that, as a result of being unable to secure necessary information, it was impossible for petitioner to obtain appropriate relief. We submit, therefore, that petitioner's cause does not come within the underlying principles of the

war exception. "The difficulties under which the plaintiffs labored respected the trial, not the institution of their suit." *McIver* v. *Ragan,* 2 Wheat. 25, 29. The case of *McIver* v. *Ragan, supra,* relied upon in *Hanger* v. *Abbott, supra* at 542, would appear controlling here. Plaintiffs therein sued in ejectment, and defendants pleaded, as a bar, possession for seven years. No corner of the grant under which plaintiffs claimed was marked except the beginning corner, and that corner, and all others but one, was within the Indian boundary. Although the land in possession of defendants did not lie within Indian territory, since the laws of the United States prohibited all persons from surveying Indian lands, plaintiffs were unable to survey their land and prove defendants within their grant until the Indian lands were ceded to the United States. Nevertheless, Mr. Chief Justice Marshall refused to except plaintiffs from the operation of the statute of limitations, reasoning as follows (2 Wheat. at 29-30):

> Wherever the situation of a party was such as, in the opinion of the legislature, to furnish a motive for excepting him from the operation of the law, the legislature has made the exception. *It would be going far, for this court to add to those exceptions. It is admitted, that the case of the plaintiffs is not within them, but it is contended to be within the same equity with those which have been taken out of the statute; as where the courts of a country are*

closed, so that no suits can be instituted. This proposition cannot be admitted. The difficulties under which the plaintiffs labored, respected the trial, not the institution of their suit. There was no obstruction to the bringing of this ejectment at an earlier day. If, at the trial, a survey had been found indispensable to the justice of the cause, the sound discretion of the court would have been exercised, on a motion for continuance. Had such a motion been overruled, the plaintiffs would have been in the condition of all those who, from causes which they cannot control, are unable to obtain that testimony which will establish their rights. If this difficulty be produced by the legislative power, the same power might provide a remedy; but courts cannot, on that account, insert in the statute of limitations, an exception which the statute does not contain. It has never been determined, that the impossibility of bringing a case to a successful issue, from causes of uncertain duration, though created by the legislature, shall take such case out of the operation of the act of limitations, unless the legislature shall so declare its will. [Emphasis added]

In any event, as found by the court below (R. 62), petitioner was not, in fact, under any disability to bring suit prior to the expiration of the statutory period. "* * * it would have been possible for the plaintiff to have filed with this Court proper claims which, even though they may not have been complete and accurate, could nevertheless

have been amended so soon as the full facts concerning them came into possession of the plaintiff. The claims could have thus been preserved against the running of the statute of limitations." It is historical record that the Japanese occupation of the Philippine Islands ended in February 1945, almost three years prior to the expiration of the statutory period. That sufficient time was afforded petitioner to obtain enough data to petition for relief in the court below is evidenced by the fact that, well within the six-year period, petitioner did file proofs of claim with the Army Claims Service for thirteen of the fifteen claims. There is no indication in the record that the remaining two claims were so different in character that no information at all about them could have been obtained during the long interval of time remaining after termination of Japanese control. Failure to obtain that data can be ascribed only to the oversight or laches of petitioner.

2. As already noted *supra*, pp. 5-8, as a general rule the enumeration by the legislature of specific exceptions to a statute of limitations is to be narrowly construed. This principle has even greater force when applied to the limitation in question, which is a part of an act waiving the sovereignty of the Government to suit. Since the act as a whole is to be narrowly construed in favor of the Government because it infringes upon and restricts sovereignty (*United States* v. *Sherwood*, 312 U. S.

584, 590; *United States* v. *Shaw*, 309 U. S. 495), *a fortiori* any doubts as to the limitation of action provision are to be resolved in favor of the Government. Moreover, this statute is not just a limitation upon the remedy of petitioners, the Act goes to the very jurisdiction of the court below. *Finn* v. *United States*, 123 U. S. 227; *United States* v. *Wardwell*, 172 U. S. 48; *B. Altman & Co.* v. *United States*, 40 F. 2d 781 (C. Cls.), certiorari denied, 282 U. S. 863. Furthermore, since Section 156 of the Judicial Code, 28 U. S. C. (1940 ed.) 262, expressly provides that "no other disability than those enumerated shall prevent any claim from being barred," the utmost of caution is called for before an implied exception is admitted by the courts. Cf. *Kendall* v. *United States*, 107 U. S. 123, 125.

The question before this Court is, therefore, not the same as that presented before *Hanger* v. *Abbott, supra*, and the cases following it. Cf. *Nathan* v. *Equitable Trust Co.*, 250 N.Y. 250, reargument denied, 250 N.Y. 612. The issue therein was whether an implied exception should be read into a state statute copied from 21 Jac. 1, c. 16, which did not provide that the enumerated disabilities were exclusive. Mr. Justice Clifford pointed out in *Hanger* v. *Abott, supra*, at 539, that "the statute of limitations was passed in 1623, more than a century before it came to be understood that debts due to alien enemies were not subject to confiscation. * * * Regarding such debts as an-

nulled by war, the law-makers of that day never thought of making provision for the collection of the same on the restoration of peace between the belligerents." Clearly this observation is not apposite to the legislature which, during the Civil War, by the Act of March 3, 1863, 12 Stat. 765, 767, enacted the period of limitation in question. This is demonstrated by the fact that a year later, the Act of June 11, 1864, 13 Stat. 123, suspended statutes of limitations for that time during which a defendant was beyond the service of process because of the Civil War. Since no such exception was inserted into the Act of March 3, 1863, and since the disabilities expressed were made exclusive, it is a necessary inference that Congress intended no such exception. That exception is not, therefore, to be judicially added.[6]

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[6] It should be pointed out that petitioner's argument that it would be an incredibly harsh and unconscionable rule that denied petitioner the right to sue and extended that right to a Japanese citizen, as an enemy alien, is without merit in this case. Section 155 of the Judicial Code, 28 U.S.C. (1940 ed.) 261, now 28 U.S.C. 2502, provides that only "aliens who are citizens or subjects of any Government which accords to citizens of the United States the right to prosecute claims against such Government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims * * *." Petitioner, who has the burden of proof herein, has made no showing that the Japanese Government permits suits against itself in its courts by citizens of the United States. Thus, whatever the equities of petitioner's argument may be in a suit between individuals, they are irrelevant here.

It should also be noted in this connection that Sections 102(b) and 103 of the Philippine Rehabilitation Act of 1946, 60 Stat. 128, 50 U.S.C. Appendix 1752(b), 1753, provide that compensation thereunder shall not be made to enemy aliens. Similarly, Section 1 of the Foreign Claims Act, as amended,

CONCLUSION

The decision below is correct, and there is no conflict of decisions. We respectfully submit that the petition for a writ of certiorari should, therefore, be denied.

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MARCH 1949.

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57 Stat. 66, 31 U.S.C. 224d, precludes payment to "any national of a country at war with the United States * * * except as the Commission or the local military commander shall determine that the claimant is friendly to the United States."

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 18

STANDARD-VACUUM OIL COMPANY, PETITIONER

v.

UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims (R. 59-64) is reported at 80 F. Supp. 657.

JURISDICTION

The judgment of the Court of Claims was entered on November 1, 1948 (R. 64). The petition for a writ of certiorari was filed on January 28, 1949, and granted on March 28, 1949. The jurisdiction of this Court rests upon 28 U. S. C. 1255(1).

QUESTION PRESENTED

Section 156 of the Judicial Code, 28 U. S. C. (1946 ed.) 262 bars, with enumerated exceptions not here material, every claim against the United States cognizable by the Court of Claims which is not

filed in that court within six years after the claim arises. In December 1941 and January 1942, the United States allegedly took certain properties of petitioner in the Philippine Islands for military purposes. On March 24, 1948, more than six years later, petitioner filed a petition in the Court of Claims to recover just compensation. In answer to the United States' motion to dismiss the claims as barred by limitation, petitioner alleged that, during the Japanese occupation of the Philippine Islands, which lasted until February 1945, it was deprived completely of access to information bearing on the existence of the claims. The question presented is whether the Court of Claims erred in granting the motion to dismiss, on the ground that Section 156 bars the claims.

STATUTE INVOLVED

Section 156 of the Judicial Code, 28 U. S. C. (1946 ed.) 262,[1] which is applicable to the present controversy, provided in pertinent part as follows:

> Every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court * * * within six years after the claim first accrues. The claims of married women first accrued during marriage, of persons under the age of

[1] Now 28 U.S.C. 2501. Section 39 of the Act of June 25, 1948, c. 646, 62 Stat. 992, saves all rights or liabilities now existing under those statutes repealed by the revision of Title 28, United States Code.

twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court * * * within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively.

STATEMENT

On December 5, 1947, petitioner, a Delaware corporation, brought suit in the Court of Claims to recover just compensation for certain of its properties in the Philippine Islands, which the United States Armed Forces of the Far East (USAFFE), in December 1941 and January 1942, allegedly requisitioned for military purposes or destroyed to prevent capture by the military forces of Japan, with whom the United States was then at war (R. 1). On March 24, 1948, an amended petition was filed, and on June 1, 1948, a second amended petition was filed which set forth fifteen claims totalling $3,832,935.09, plus interest (R. 29). The amended petition eliminated nine of the claims stated in the original and added the two claims here involved, the Seventh (R. 15)[2] and the Fifteenth (R. 27-28), which amount to $263,132.85, plus interest. Neither the Seventh nor the Fifteenth

[2] Specifically, paragraphs 64 to 67, inclusive of the Seventh Claim.

claim arose out of the same transactions or occurrences as the other claims, which are not here involved.

On April 12, 1948, the United States moved to dismiss, as barred by limitation, the Fifth claim of the amended petition, that part of the Seventh claim which is stated in paragraphs 64 to 67, inclusive, of the amended petition, and the Fifteenth claim of the amended petition, or in the alternative, so much of the Fifteenth claim as relates to the alleged requisition of petroleum supplies (R. 58). By leave granted subsequent to the motion to dismiss, petitioner, on June 1, 1948, duly filed a second amended petition, from which it appeared that the Fifth claim accrued within six years prior to the filing of the petition (R. 1, 12-13). In answer to the motion to dismiss, petitioner asserted in a memorandum that, during the Japanese occupation of the Philippines, which lasted until February 1945, it was deprived completely of access to information on the existence of the claims.

Prior to the present litigation, at various times from January 16, 1946, to September 10, 1947 (R. 4-5, 7-8, 9, 12, 14, 16, 17, 19, 21, 22, 23, 25, 27), petitioner had sought administrative relief by filing with the United States Army Claims Service a proof of claim for each of thirteen of the fifteen claims stated in the second amended petition. Such proofs of claim had been filed with the Army Claims Service well within the six-year period of limita-

tions imposed by Section 156 of the Judicial Code, *supra,* p. 2, upon actions cognizable by the Court of Claims, and claims were subsequently seasonably filed below. However, no such proof of claim was filed with the Claims Service for the claims here involved, and admittedly, unless the running of the statute was suspended, they were not seasonably filed below.

The court below, one judge dissenting, in answering the question therein raised as to "whether the statute of limitations is suspended by reason of the fact that the plaintiff was unable to make complete and timely claims against the United States by reason of the occupation of the Philippine Islands by the military forces of the Japanese" (R. 60), noted the fact that proof of certain claims had been filed by petitioner with the United States Army Claims Service on May 3, 1946, and found, therefore, that "At that time, which was over a year and one-half prior to the six-year limitation, it would have been possible for the plaintiff to have filed with this Court proper claims which, even though they may not have been complete and accurate, could nevertheless have been amended as soon as the full facts concerning them came into possession of the plaintiff. The claims could have thus been preserved against the running of the statute of limitations. The language of Section 156 of the Judicial Code, *supra,* is clear and unambiguous * * *. In view of this language em-

ployed by Congress, and the circumstances of this case, we do not think that the running of the statute should be tolled as to the claims of the plaintiff * * *" (R. 62-63). Accordingly, the court below, on November 1, 1948, granted the United States' motion to dismiss (R. 64).

SUMMARY OF ARGUMENT

I

A. The unqualified language of Section 156 of the Judicial Code, *supra,* which limits the jurisdiction of the Court of Claims, precludes the tolling of the period of limitations by any disability not specifically enumerated therein. Familiar principles of statutory construction admonish against judicial expansion of the disabilities expressly set forth in the statute. "The general rule is that the language of the act must prevail, and no reason based on apparent inconvenience or hardship can justify a departure from it." *Amy* v. *Watertown,* 130 U. S. 320, 324. This principle has even greater force when applied to the statute in question, a statute which is not a mere limitation upon the remedy of petitioners but which goes to the jurisdiction of the court below. "Jurisdiction is not a matter of sympathy or favor. The courts are bound to take notice of the limits of their authority." *Reid* v. *United States,* 211 U. S. 529, 539. We submit that *Kendall* v. *United States,* 107 U. S. 123, where this Court refused to read an implied exception into the very act here involved, is controlling.

B. Petitioner, citing cases involving statutes of limitation governing litigation between private parties, asserts that, by implied exception, such statutes are tolled during war as to non-resident alien enemies, who have no standing to sue by operation of law. Hence, since petitioner claims it was unable to ascertain the existence of its claims through no fault of its own, because of war, petitioner argues that it should not be bound by a strict application of Section 156 of the Judicial Code, *supra*. Assuming that the rationale of the cases upon which petitioner relies could properly be applied to Section 156 of the Judicial Code, *supra*, despite its jurisdictional character, petitioner can not invoke the principle of these cases because its alleged disability to sue did not arise by operation of law.

Statutes of limitations are practical devices to spare the courts from litigation of stale claims and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost. Although they usually come into play in situations where the plaintiff is guilty of negligence or laches, it does not follow that every supervening disability, not the fault of plaintiff, will raise an implied exception. The operation of the statute is suspended only where there is no possibility, as a matter of law, of maintaining suit. Inconvenience or hardship brought about by war or disruption of communications do not toll the statute as to non-resi-

dent alien enemies; a lack of capacity to sue by operation of law is required. The basis of petitioner's claim, however, is not that it lacked capacity to sue but that the factual consequences of war prevented it from instituting suit. Its claim clearly fell within that "inconvenience or hardship" which this Court has said cannot justify judicial amendment of a statute of limitations. *Amy* v. *Watertown*, 130 U. S. 320, 324. Examination of the alien enemy line of authorities reveals that that exception rests upon implications drawn from the impact of international law upon municipal law and upon an inference that the legislature did not intend to bar the claims of alien enemies. But no considerations based on international law are involved herein, and it can not be inferred that Congress did not intend to bar claims which did not fall within the enumerated exceptions. Furthermore, the alien enemy exception is based upon a denial of *access* to the courts. Here, petitioner does not assert, that it was, in fact, denied access to the courts and could not have instituted suit; its difficulty related to the trial and not to the timely filing of a claim. Cf. *McIver* v. *Ragan*, 2 Wheat. 25.

II

Assuming that the statute was suspended as to petitioner during the Japanese occupation of the Phillippine Islands, the claims are nevertheless barred. The act provides that the claims of those

under disability are not barred only if a claim is filed in the Court of Claims within three years after the disability has ceased. These claims were filed below more than three years after civil administration was restored in the Philippine Islands. The allegations contained in the petition filed below show that within that three year period petitioner was able to bring timely suit for claims amounting to $3,569,802.24. Failure to institute timely suit for the $263,132.85 here involved can be ascribed only to the oversight or laches of petitioner. Even if petitioner had not obtained complete information of its claims within that three year period, it could have filed a timely petition and subsequently amended it as soon as the full facts came into its possession.

ARGUMENT

I

The Six Year Period of Limitations Upon Suits Against the United States Was Not Suspended as to Petitioner During the Japanese Occupation of the Philippine Islands

Section 156 of the Judicial Code, 28 U.S.C. (1946 ed.) 262, bars every claim against the United States cognizable by the Court of Claims which is not filed in that court within six years after the claim first accrues. Provision is made therein for the tolling of the statute as to certain enumerated disabilities which, in clear language, are made the exclusive exceptions. Admittedly, petitioner's claims here involved were not seasonably filed and petitioner

does not come within any of the express, exclusive statutory exceptions. Petitioner asserts, however, that it was unable to file suit in the Court of Claims until it could ascertain the nature and extent of its claims, and that such claims could not be so determined during the Japanese occupation of the Philippine Islands. Petitioner contends, in essence, that, although this alleged disability does not come within the language of the statute, nevertheless the statute should be judicially construed so as to engraft an additional disability not specified by Congress. We submit that if the statute of limitations is to be amended for petitioner's purposes, such amendment can be made only by Congress.

A. *The plain language of Section 156 of the Judicial Code, which limits the jurisdiction of the Court of Claims, precludes the tolling of the statute by any disability not specifically enumerated therein.*

The language of the act is plain and unequivocal. After specifying the excepted disabilities, the act declares that "no other disability than those enumerated shall prevent any claim from being barred." It is difficult to conceive of other phraseology by which Congress could have made its intention any clearer. "Where the words are plain there is no room for construction." *Osaka Shosen Line v. United States,* 300 U. S. 98, 101, and cases there cited. In the absence of any legislative history

evidencing a contrary interpretation, and since a literal application of the Act does not lead to absurd and outlandish consequences, there can be no justification, under the guise of construction, for engrafting upon the act an additional disability not specified by Congress. *Id.* at 101.

It is an established rule of construction that the enumeration by the legislature of specific exceptions to a statute of limitations excludes all others. See 1 Wood, *Limitations* (4th ed. 1916), p. 55; 3 Sutherland, *Statutory Construction* (3d ed. 1943), p. 388. "The general rule is that the language of the act must prevail, and no reason based on apparent inconvenience or hardship can justify a departure from it." *Amy* v. *Watertown,* 130 U. S. 320, 324; *Kendall* v. *United States,* 107 U. S. 123, 125; *McIver* v. *Ragan,* 2 Wheat. 25, 29; *Musgrove* v. *McManus,* 24 N.M. 227, 232; *Powell* v. *Koehler,* 52 Ohio 103, 118-119.

This principle has even greater force when applied to the statute in question, a statute which does not merely impose a limitation upon the remedy of petitioners, but which also establishes a limitation on the jurisdiction of the court below. *Finn* v. *United States,* 123 U. S. 227; *United States* v. *Wardwell,* 172 U. S. 48. In this regard, this Court has declared that "suits against the United States can be maintained only by permission, in the manner prescribed and subject to the restrictions imposed." *Munro* v. *United States,* 303 U. S. 36, 41.

"Jurisdiction is not a matter of sympathy or favor. The courts are bound to take notice of the limits of their authority." *Reid* v. *United States,* 211 U. S. 529, 539. Since petitioner does not fall within any of the enumerated exceptions in Section 156 of the Judicial Code, *supra,* the judiciary should not insert into the statute an exception which it does not contain and thereby unauthorizedly add to the limited jurisdiction which Congress has given to the court below.

In *Kendall* v. *United States,* 107 U. S. 123, this Court followed the principles of construction referred to above and refused to depart from the plain language of the act. We believe the *Kendall* case, which was decided soon after the passage of the Act, is controlling here. In that case, the claim of Kendall, who had engaged in the service of the Confederate Government, arose in December 1865. Since a claimant, if a citizen, must have at all times borne true allegiance to the Government of the United States (28 U.S.C. (1946 ed.) 265), Kendall had no standing to sue. By virtue of the amnesty proclamation of December 25, 1868, however, his disabilities were removed, and his rights, privileges, and immunities under the Constitution, restored. On November 22, 1872, less than six years after the amnesty proclamation but more than six years after his claim accrued, Kendall filed his petition. This Court refused to exclude from computation,

n the issue of limitation, the time during which he vas unable to sue. The opinion stated (*id.* at 125):

> We said in *McElrath* v. *United States,* 102 U. S. 426, that the government could not be sued except with its consent, and that it may restrict the jurisdiction of the Court of Claims to certain classes of demands. The acts in question do contain restrictions which that court may not disregard. For instance, where it appears in the case that the claim is not one for which, consistently with the statute, a judgment can be given against the United States, it is the duty of the court to raise the question whether it is done by plea or not. To that class may be referred claims which are declared barred if not asserted within the time limited by the statute. What claims are thus barred? The express words of the statute leave no room for contention. *Every* claim—except those specially enumerated—is forever barred unless asserted within six years from the time it first accrued. And that there might be no misapprehension as to the intention of Congress, the statute, after enumerating the cases to which the limitation of six years should not apply, declares that "no other disability than those enumerated shall prevent any claim from being disbarred." The court cannot superadd to those enumerated, a disability arising from the claimant's inability to truthfully take the required oath. It has no more authority to engraft that disability upon the statute than a disability arising from sickness,

surprise, or inevitable accident, which might prevent a claimant from suing within the time prescribed. * * *

We submit, therefore, that petitioner's contentions are authoritatively rejected by the *Kendall* decision. The issue is one of jurisdiction and the language of the act is clear and definite. "The court cannot superadd to those [disabilities] enumerated." *Kendall* v. *United States, supra,* at 125; cf. *Green* v. *United States,* 17 C. Cls. 174.

B. *Petitioner does not come within any implied exception to statutes of limitations affecting private litigation.*

Petitioner, citing cases involving statutes of limitations applicable to litigation between private parties, contends that it is now well established that grounds other than those specified in the statute may have the effect of suspending the running of the period of limitations. Reliance is placed upon a line of cases beginning with *Hanger* v. *Abbott,* 6 Wall. 532, which hold that war tolls the running of the statute as between citizens of different belligerent nations. It is asserted that this exception is based upon principles of justice and fairness which are equally applicable here. The argument is that, since petitioner allegedly was unable to ascertain the existence of its claims through no fault of its own, it should not be bound, in the circumstances, by a strict application of the statute.

Assuming *arguendo* that the rationale of the cases relied upon by petitioner could be applied to the jurisdictional act involved here, it seems clear that petitioner's cause does not fall within that rationale.

1. At the outset, it is important to consider the nature and object of the usual statute of limitations. Its purpose is not to punish the plaintiff but "to quiet titles, to suppress fraud, and to supply the deficiency of proofs arising from the ambiguity and obscurity or antiquity of transactions. * * * they take away all solid ground of complaint, because they rest on the negligence or *laches* of the party himself." *Hanger* v. *Abbott,* 6 Wall. 532, 538. It would seem, therefore, that if the disability to sue results through no fault of the plaintiff, it is unjust to bar the claim. Nevertheless, the decisive consideration is that it is the legislature and not the courts which must determine whether an exception is to be made—it is the function of the legislature to choose those classes of disabilities which it will except, and it can, if it deems proper, require the disability to exist at the time the cause of action arises, and not to allow the disabilities to operate cumulatively.[3]

[3] "Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. They are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost. *Order of Railroad Telegraphers*

Recognizing the plenary power of the legislature in this regard, the courts, in adding an exception of limited application to those enumerated in a statute, have inferred that the legislature would have intended such exception had the issue been brought to its attention. Cf. *Hanger* v. *Abbott*, 6 Wall. 532, 539; *Wall* v. *Robson*, 2 Nott & McCord [S. C.] 498, 506-508. It has been presumed that the legislature would not have intended to bar claims where the plaintiff was denied access to the courts.[4] That condition may come about when a state of war suspends the right of non-resident alien enemies to institute suit (*Hanger* v. *Abbott*, 6 Wall. 532; *The Protector*, 9 Wall. 687; *Levy* v. *Stewart*, 11 Wall. 244; *Brown* v. *Hiatts*, 15 Wall. 177; *Borovitz* v. *American Hard Rubber Co.*, 287 Fed. 368 (N. D. Ohio); *Farenholtz* v. *Meinshausen*, 181 App. Div. 474; *Siplyak* v. *Davis*, 276 Pa. 49; *Wall* v. *Robson*, 2 Nott & McCord [S. C.] 498),

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v. *Railway Express Agency*, 321 U.S. 342, 349. They are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the voidable and unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate. Their shelter has never been regarded as what is now called a 'fundamental' right or what used to be called a 'natural' right of the individual. He may, of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control." *Chase Securities Corp.* v. *Donaldson*, 325 U.S. 304, 314.

[4] Although infants, idiots, and insane persons have no capacity to sue, they are not denied access to the courts. Suit may be brought in their behalf by a next friend or guardian.

when the courts of justice are closed because of civil unrest (*Adger* v. *Alston*, 15 Wall. 555; *Batesville Institute* v. *Kauffman*, 18 Wall. 151; *Ross* v. *Jones*, 22 Wall. 576),[5] or when a statute prevents the filing of suit prior to an administrative determination (*Braun* v. *Sauerwein*, 10 Wall. 218).

It is within this exception that petitioner attempts to bring itself by asserting that it was unable to file suit until it could ascertain the nature of its claims, which could not be determined during the Japanese occupation of the Philippine Islands. Petitioner urges that the statute of limitations cannot run when the vicissitudes of war impose insurmountable difficulties for which petitioner is in no way responsible. At first blush, petitioner's argument seems to come within the rationale of the cases cited above. It may appear harsh to bar a plaintiff when he has been impeded from filing suit by a supervening disability, not his own fault. But as we have already noted, equitable considerations do not curb the legislature's power to make only such exceptions as it sees fit. And, as this Court has pointed out, not every supervening disability, not the fault of the plaintiff, is sufficient to raise an implied exception to the statute of limitations. *Amy* v. *Watertown*, 130 U. S. 320.

In *Amy* v. *Watertown*, *supra*, at 323-324, Mr. Justice Bradley, in limiting the prior overbroad

[5] See also, Gregory, *The Effect of War On the Operation of Statutes of Limitations*, 28 Harv. L. Rev. 673.

generalization drawn from *Hanger* v. *Abbott, supra,* observed "It is said by Mr. Justice Strong in *Braun* v. *Sauerwein,* 10 Wall. 218, 223, 'It seems, therefore, to be established, that the running of a statute of limitations may be suspended by causes not mentioned in the statute itself.' The observation is undoubtedly correct; but the cases in which it applies are very limited in character, and are to be admitted with great caution; otherwise the court would make the law instead of administering it."

Continuing, Mr. Justice Bradley declared (*id.* at 325-326):

> There is one class of cases which is excluded from the operation of the statute by *act of law* itself, of which the case in which Mr. Justice Strong made the remark referred to is one. This class embraces those cases in which no action can be brought at all, either for want of parties capable of suing, or *because the law prohibits the bringing of an action.* * * * So where a citizen of one country has a cause of action against a person who resides in another country at war with his own, the *law of nations* forbids any intercourse between them, and suspends all suits and actions by the one against the other: and, therefore, the time, during which the right to sue is thus suspended, is not reckoned as any part of the time given by the statute of limitations for bringing an action. [citations] *Besides this general exception created by act of law, it is difficult to find any other ground or cause for suspending the*

operation of the statute not specified in the act itself. [emphasis added]

We submit that petitioner does not come within the *Hanger* v. *Abbott* exception. As pointed out in Part I A, *supra,* p. 11, "the general rule is that the language of the act must prevail, and no reason based on apparent inconvenience or hardship can justify a departure from it". *Amy* v. *Watertown,* 130 U. S. 320, 324. "Unless the difficulty of bringing an action in a particular case can be brought within the general principle that the statute will not begin to run where no *legal* possibility of maintaining an action exists even though a theoretical right of action has accrued, or within one of the disabilities expressly enumerated by the statute, the general rule is clear that the statute will begin to run, and its operation will not be suspended by other disabilities." [emphasis supplied] 6 Williston, *Contracts* (Rev. ed. 1936) § 2011.

The alien enemy exception is in accord with this principle. As pointed out by Mr. Justice Bradley, *supra,* that exception arises as a result of an "act of law." Traditionally, a state of war suspends limitation periods as to non-resident alien enemies by its mere existence, without the necessity or relevancy of looking into issues of fact as to whether or not it actually prevented legal proceedings. It is not the inconvenience or hardship brought about by war, the disruption of communications, which

tolls the statute, but the denial of a judicial remedy by "act of law."[6]

Here, however, the alleged disability with which petitioner was burdened is a factual disability, not a legal disability. It is not contended that there was no forum available to petitioner or that petitioner had no capacity to sue. The basis of petitioner's argument is that the factual consequences of war prevented petitioner from instituting suit. Assuming this to be true, such factual disability does not call for the suspension of the statute of limitations.[7] As such it is merely that "incon-

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[6] State Workmen's Compensation Act cases arising after World War I demonstrate that the question is one of legal, not factual, disability. Despite the fact that hostilities were terminated and lines of communication reestablished, limitations were tolled as to aliens residing in belligerent countries until the signing of the treaty of peace. *Colorado Fuel & Iron Co.* v. *Industrial Commission*, 73 Colo. 579; *Inland Steel* v. *Jelenovic*, 84 Ind. App. 373; *Industrial Commission* v. *Rotar*, 124 Ohio 418; *Garvin* v. *Diamond Coal & Coke Co.*, 278 Pa. 469. On the other hand, the delineation of new national boundaries and the creation of new States converted many alien enemies into alien friends. In those cases, the statute began to run when the enemy status ceased. *Sadowski* v. *Hubbard Steel Foundry Co.*, 100 Ind. App. 233; *Kolundjija* v. *Hanna Ore Mining Co.*, 155 Minn. 176; *Lipmanowich* v. *Crookston Lumber Co.*, 168 Minn. 332. [Disability to sue as an alien enemy depends upon residence and not upon citizenship. See *Ex parte Kawato*, 317 U.S. 69; *Wirtele* v. *Grand Lodge, A.O.U.W.*, 111 Neb. 302 (citizen of United States resident in Germany during World War I); 2 Hyde, *International Law* (1922 ed.) § 611; 27 Yale L.J. 104-108.] Similarly, where the alien resided in an allied country, the statute was not suspended. *Poccardi* v. *Ott*, 83 W. Va. 166; see *Siplyak* v. *Davis*, 276 Pa. 49, 58.

[7] *Osbourne* v. *United States*, 164 F. 2d 767 (C.A. 2), is contra to the above analysis. In that case, libelant was a sailor who had been injured through the negligence of the libelees in late 1941. Having been interned by the Japanese from Decem-

venience or hardship" which this Court has said cannot justify a departure from the statute. *Amy* v. *Watertown, supra,* at 324.[8]

2. Examination of the reasoning of the courts in articulating the alien enemy exception shows clearly that none of the considerations upon which that exception rests is present before this Court. These considerations are fully developed in the opinion of this Court in *Hanger* v. *Abbott,* 6 Wall. 532, and in the opinion of the Constitutional Court of South Carolina in *Wall* v. *Robson,* 2 Nott & McCord [S. C.] 498. In *Hanger* v. *Abbott, supra,* Abbott of New Hampshire sued Hanger of Arkansas in assumpsit. The question was whether the period of the Civil War was to be excluded from the computation of time fixed by the Arkansas Statute of Limi-

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ber 8, 1941, to October 1945, he was unable to comply with the jurisdictional period of limitations of either the Suits in Admiralty Act, 46 U.S.C. 745, or the Jones Act, 46 U.S.C. 688, 45 U.S.C. 56. The Court of Appeals held that the period of limitations was suspended during his imprisonment. For the reasons set forth in Part I A of this brief, we believe this decision to be in error. However, we submit that the *Osbourne* case is not, in any event, authority for petitioner's position. See *infra,* pp. 26-29.

[8] It should be pointed out that petitioner's argument that it would be an incredibly harsh and unconscionable rule that denied petitioner the right to sue and extended that right to a Japanese citizen, as an enemy alien, is without merit in this case. Section 155 of the Judicial Code, 28 U.S.C. (1946 ed.) 261, now 28 U.S.C. 2502, provides that only "aliens who are citizens or subjects of any Government which accords to citizens of the United States the right to prosecute claims against such Government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims * * *." Petitioner, who has the burden of proof herein, has made no showing that the Japanese Government permits suits against itself in its courts by citizens of the United States. Thus, whatever the equities of petitioner's

tations (copied from 21 Jac. I, c. 16), there being no exception by the terms of the statute for such case. In *Wall* v. *Robson, supra,* Robson, a British subject, sued Wall, an American citizen residing in South Carolina, on a bill of exchange. The question was whether the period of the War of 1812 was to be excluded from the South Carolina Statute of Limitations of 1712, there being no exception by the terms of the statute for such case.

First, the opinions point out that war imports a prohibition of all commercial intercourse and correspondence with citizens or persons domiciled in the enemy country. Trading with the enemy subjects the property to confiscation, or to capture and condemnation. "In former times the right to confiscate debts was admitted as an acknowledged doctrine of the law of nations, and in strictness it may still be said to exist, but it may well be considered as a naked and impolitic right, condemned by the enlightened conscience and judgment of modern times. Better opinion is that executed contracts, such as the debt in this case, although existing prior to the war, are not annulled or extin-

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argument may be in a suit between individuals, they are irrelevant here.

It should also be noted in this connection that Sections 102(b) and 103 of the Philippine Rehabilitation Act of 1946, 60 Stat. 128, 50 U.S.C. Appendix 1752(b), 1753, provide that compensation thereunder shall not be made to enemy aliens. Similarly, Section 1 of the Foreign Claims Act, as amended, 57 Stat. 66, 31 U.S.C. 224d, precludes payment to "any national of a country at war with the United States * * * except as the Commission or the local military commander shall determine that the claimant is friendly to the United States."

guished, but the remedy is only suspended, which is a necessary conclusion, on account of the inability of an alien enemy to sue * * *." *Hanger* v. *Abbott, supra,* at 536. "And the reason given for not permitting an alien enemy in time of war, is a good one, as it might have a tendency to draw the resources out of the country, and the better enable or aid the opposite party to carry on the war on his part." *Wall* v. *Robson, supra,* at 503.

Accordingly, if "Absolute suspension of the right, and prohibition to exercise it, exist during war by the law of nations, * * * then it is clear that peace cannot bring with it the remedy if the war is of much duration, unless it also be held that the operation of the statute of limitation is also suspended during the period the creditor is prohibited, by the existence of the war and the law of nations, from enforcing his claim. Neither laches nor fraud can be imputed in such a case, and none of the reasons on which the statute is founded can possibly apply, as the disability to sue becomes absolute by the declaration of war, and is a conclusion of law." *Hanger* v. *Abbott, supra,* at 539-540. "A contrary doctrine would enable every debtor in a country lately restored to peace, where there had been commercial dealings before the war, to cheat and defraud his just and *bona fide* creditors." *Wall* v. *Robson, supra,* at 503; see also, *Hanger* v. *Abbott, supra,* at 542.

Finally, the opinions state that it could not have been within the contemplation of the legislatures

concerned to bar suit by alien enemies on account of limitation. "Cases where the courts of justice are closed in consequence of insurrection or rebellion are not within the express terms of any such exception, but the statute of limitations was passed in 1623, more than a century before it came to be understood that debts due to alien enemies were not subject to confiscation. * * * Regarding such debts as annulled by war, the law-makers of that day never thought of making provision for the collection of the same on the restoration of peace between the belligerents." *Hanger* v. *Abbott, supra,* at 539; see also, *Wall* v. *Robson, supra,* at 507-508.

In summary, the courts held: The law of nations denies access to the courts to alien enemies during a war;[9] therefore, the law of nations suspends the operation of the usual municipal statute of limitations.[10] In connection with such statutes, the courts

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[9] The correctness of this statement is open to question. In the civil law, anyone, even an alien enemy, who can get to the courts may prosecute or defend his rights, with the same privileges and under the same duties as in time of peace. See Thayer, Schoch, Ireland, *The Effect of a State of War Upon Statutes of Limitation or Prescription,* 17 Tulane L. Rev. 416-446.

[10] "* * * If then it is clear and evident both by the common law and the law or courtesy of nations, that there is no national principle existing to bar or prevent an alien in a foreign country from recovering a just debt after the restoration of peace, shall it be said or allowed, that any municipal regulation of one of the states shall have that effect, where the general law of nations and those of foreign commerce say the contrary? I very much question the power or authority of any state or nation, at this enlightened period of the world, to pass such a law, if they were disposed to do such an act of injustice." *Wall* v. *Robson, supra,* at 503-504.

Treaties of peace sometimes specifically provide for the

inferred that the legislature did not intend to bar the claims of alien enemies.

Neither of these considerations is present here. The impact of the law of nations upon municipal law—a decisive factor in *Hanger* v. *Abbott, supra,* and *Wall* v. *Robson, supra*—does not enter into this case. Petitioner is not a foreign corporation but a Delaware corporation; the disability is factual, not legal. Nor can it be inferred in connection with the statute here involved that Congress did not intend to bar all claims which did not fall within the enumerated exceptions in Section 156.

The observation of Mr. Justice Clifford in *Hanger* v. *Abbott, supra,* at 539, that the lawmakers of 1623 never thought of suspending the period of limitations because debts due to alien enemies were subject to confiscation, is not apposite to the Congress which, during the Civil War, by the Act of March 3, 1863, 12 Stat. 765, 767, enacted the statute in issue (28 U.S.C. (1946 ed.) 262). This is demonstrated by the enactment, a year later, of the Act of June 11, 1864, 13 Stat. 123, which suspended statutes of limitations for that time during which a defendant was beyond the service of process because of the Civil War. Also pertinent is the Abandoned Property Act of March 12, 1863, 12 Stat. 820, which enabled those persons resident in

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retroactive suspension of the operation of statutes of limitation during the war period. See *Hopkirk* v. *Bell,* 3 Cranch 454; *Ogden* v. *Blackledge,* 2 Cranch 272; cf. Article 300(a) of the Treaty of Versailles, June 28, 1919 [Carnegie Endowment for International Peace, *The Treaties of Peace* 1919-1923, Vol. 1, p. 190].

the insurrectionary states but loyal to the Union to bring suit in the Court of Claims "within two years after the suppression of the rebellion" to recover for property taken by the United States. Although the Act's purpose was to create a right of action in those otherwise considered as public enemies,[11] insofar as it adopts a period of limitations other than the six-year provision in Section 156, it indicates a legislative awareness of the hardships of war. That Congress nevertheless did not provide for other claims against the United States which might be barred by limitation during the Civil War is, we believe, significant. The enumerated disabilities having been made exclusive, it is a necessary inference that Congress intended no exceptions. Cf. *Nathan* v. *Equitable Trust Co.*, 250 N. Y. 250, reargument denied, 250 N. Y. 612.

3. There is a further and equally fundamental objection to petitioner's reliance on the *Hanger* v. *Abbott* line of authorities. In those cases, as the court below points out (R. 62), plaintiff was denied access to the courts.[12] Here, the courts of the United States were open during the time in ques-

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[11] See *United States* v. *Anderson*, 9 Wall. 56, 65.

[12] The same rationale—denial of access to courts—was the basis for the suspension of the statute in *Osbourne* v. *United States*, 164 F. 2d 767 (C.A. 2), discussed in footnote 7, *supra*, pp. 20-21. The Court of Appeals reasoned that "All statutes of limitation are based on the assumption that one with a good cause of action will not delay bringing it for an unreasonable period of time; but, *when a plaintiff has been denied access to the courts, the basis of the assumption has been destroyed.*" [emphasis added] *Id.* at 769.

tion, and petitioner had standing to sue.[13] "The difficulties under which the plaintiffs labored, respected the trial, not the institution of their suit." *McIver* v. *Ragan*, 2 Wheat. 25, 29.

The case of *McIver* v. *Ragan, supra*, cited in *Hanger* v. *Abbott, supra*, at 542, would also appear controlling here. Plaintiffs there sued in ejectment, and defendants pleaded, as a bar, possession for seven years. No corner of the grant under which plaintiffs claimed was marked except the beginning corner, and that corner, and all others but one, was within the Indian boundary. Although the land in possession of defendants did not lie within Indian territory, since the laws of the United States prohibited all persons from surveying Indian lands, plaintiffs were unable to survey their land and prove defendants within their grant until the Indian lands were ceded to the United States. Nevertheless, Mr. Chief Justice Marshall refused to except plaintiffs from the operation of the stat-

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[13] A pertinent inquiry is whether a forum is available. As between citizens of the confederate states, it was held that statutes of limitations were not suspended during the Civil War where the state courts were open. *Lockhart* v. *Horn*, Fed. Cas. No. 8445 (C.C.S.D. Ala.), affirmed, 17 Wall. 570; *Cross* v. *Sabin*, 13 Fed. 308 (C.C.E.D. Tenn.); cf. *Smith* v. *The Charter Oak Life Ins. Co.*, 64 Mo. 330. However, since the federal courts located in the insurrectionary states were closed during the war, the statutes were held not to be a bar to suit in the federal courts after the war. *Adger* v. *Alston*, 15 Wall. 555; *Batesville Institute* v. *Kauffman*, 18 Wall. 151; *Ross* v. *Jones*, 22 Wall. 576.

ute of limitations, reasoning as follows (2 Wheat. at 29-30):

> Wherever the situation of a party was such as, in the opinion of the legislature, to furnish a motive for excepting him from the operation of the law, the legislature has made the exception. It *would be going far, for this court to add to those exceptions. It is admitted, that the case of the plaintiffs is not within them, but it is contended to be within the same equity with those which have been taken out of the statute; as where the courts of a country are closed, so that no suits can be instituted. This proposition cannot be admitted. The difficulties under which the plaintiffs labored, respected the trial, not the institution of their suit.* There was no obstruction to the bringing of this ejectment at an earlier day. If at the trial, a survey had been found indispensable to the justice of the cause, the sound discretion of the court would have been exercised, on a motion for continuance. Had such motion been overruled, the plaintiffs would have been in the condition of all those who, from causes which they cannot control, are unable to obtain that testimony which will establish their rights. If this difficulty be produced by the legislative power, the same power might provide a remedy; but courts cannot, on that account, insert in the statute of limitations, an exception which the statute does not contain. It has never been determined, that the impossibility of bringing a case to a successful issue, from causes of uncertain duration, though cre-

ated by the legislature, shall take such case out of the operation of the act of limitations, unless the legislature shall so declare its will. [Emphasis added]

We see no basis for distinguishing the two cases. In *McIver* v. *Ragan*, as is here alleged, plaintiff was completely without information as to the existence of the cause of action. Moreover, in that case, plaintiff's ignorance was caused by operation of federal statute. We submit, therefore, that Mr. Chief Justice Marshall's rationale is equally compelling here.

II

By the Terms of Section 156 of the Judicial Code, the Claims of Petitioner Are Barred Because Suit Was Not Filed Within Three Years After the Disability Ceased

Assuming *arguendo* that petitioner was under a disability which gives rise to an implied exception to Section 156 of the Judicial Code, 28 U.S.C. (1946 ed.) 262, petitioner's claims are nevertheless barred. The act provides that the claims of those under the enumerated disabilities shall not be barred if the petition be filed in the Court of Claims "within three years after the disability has ceased." If petitioner is to be excepted from the statute by reason of a disability not enumerated, that disability should stand on no better footing than those disabilities expressly provided for by Congress. The considerations advanced in Part I, *supra*, pp. 10-14, would, if nothing else, call for such equal treatment.

The claims here involved were filed in the court below on March 24, 1948, more than three years after the restoration of civil administration in the Philippine Islands on February 27, 1945.[14] Not all of the Philippines were liberated by February of 1945, and, of course, petitioner was not at once able to gather complete information as to the existence of its claims. However, at that time, petitioner was no longer *completely* denied access to information. Since petitioner's contention is that the *complete* deprivation of access to information suspends the running of the statute, we submit that the disability, if any, terminated in February of 1945.

We believe that the allegations contained in the petition filed below demonstrate that, at the least, petitioner could have filed timely claims which could have been later amended when further information was obtained. At various times from January 16, 1946, to September 10, 1947 (R. 4-5, 7-8, 9, 12, 14, 16, 17, 19, 21, 22, 23, 25, 27), petitioner sought administrative relief by filing with the United States Army Claims Service, a proof of claim for each of thirteen of the fifteen claims stated in the second amended petition. Such proofs of claim were filed with the Claims Service well within the six-year limitation imposed by Section 156 of the Judicial Code upon actions cognizable in

[14] See Official Gazette of the Republic of the Philippines, vol. 41, No. 1, April 1945, p. 86; New York Times, February 27, 1945, p. 1, col. 2.

the Court of Claims, and claims were subsequently seasonably filed below in the petition of December 5, 1947. No such proof of claim was filed with the Claims Service for the two claims here involved. There is no indication in the record that the remaining two claims were so different in character that no information at all about them could have been obtained in the three years remaining after February 1945. Failure to obtain that data can be ascribed, therefore, only to the oversight or laches of petitioner.[15] As the court below states (R. 62), "it would have been possible for the plaintiff to have filed with this Court proper claims which even, though they may not have been complete and accurate, could nevertheless have been amended as soon as the full facts concerning them came into possession of the plaintiff."

Apart from the three-year provision of the act itself, we believe that petitioner was afforded a reasonable time after February 1945 in which to bring suit. The United States would seem entitled to reasonable notice of purported claims before the deficiency of proofs arising from ancient transactions is made irreparable. We submit, therefore, that regardless of whether petitioner's alleged disability tolled the statute during the Japanese occupation of the Philippine Islands, the claims here involved are barred.

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[15] The thirteen claims which were filed in time amount to $3,569,802.24, plus interest; the two remaining claims total $263,132.85, plus interest.

CONCLUSION

For the reasons stated, the judgment of the court below should be affirmed.[16]

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[16] If the judgment be reversed on the record before this Court, the cause should be remanded with directions to the court below to overrule the motion to dismiss without prejudice, to order petitioner to amend its pleadings to include the allegations of fact contained in the memoranda as to petitioner's disability to sue, to order trial of such facts, and to make such findings as are necessary, in accordance with the conclusions of law of this Court, for the final disposition of the motion to dismiss.

The Brief for the United States herein is premised on the assumption that petitioner, in fact, suffered from a supervening disability, not its own fault. There is nothing in the record to support that assumption. The various petitions filed in the Court of Claims contain no allegation that petitioner was deprived of access to information bearing on the existence of its claims. Nor did petitioner amend its petition to show such facts after the United States moved to dismiss the claims here involved as barred by limitation. Instead, in its unverified memoranda in answer to the motion, petitioner alleged that as an expectable concomitant of war all local records and files were either destroyed, lost or taken by the invading forces. Petitioner did not allege that it possessed no records in the United States of its property in the Philippine Islands. Petitioner further asserted that the only persons who would have had sufficient knowledge of the claims, in the absence of documentary material, were employees of petitioner at the various installations in the Islands, and urged the court below to take judicial notice that these employees were either killed by the invading forces or placed in concentration camps during the Japanese occupation.

Such unverified allegations of fact appearing in a memorandum do not properly constitute part of the record. Nor can this Court take judicial notice that all of petitioner's employees in the Philippines were dead or imprisoned during the Japanese occupation. Such a "fact" is neither "so notoriously true as not to be the subject of reasonable dispute, [n] or what is capable of immediate and accurate demonstration by resort to sources of indisputable accuracy easily accessible to men in the situation of members of the court." Morgan, *Judicial Notice*, 57 Harv. L. Rev. 269, 273.

In the absence of anything in the record as to petitioner's ignorance of the existence of the claims, petitioner's state-

Respectfully submitted,

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ment of the question presented does not accurately present the issue before this Court. That issue is whether, on the pleadings, petitioner's claims are barred by Section 156 of the Judicial Code, 28 U.S.C. (1946 ed.) 262.

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